

United States
Circuit Court of Appeals
For the Ninth Circuit.

H. C. AMES,

Plaintiff in Error,

vs.

JERRY SULLIVAN,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the District of Alaska, Second Division.

Filed

FEB 4 - 1916

F. D. Mendon,
Clerk.

United States
Circuit Court of Appeals
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H. C. AMES,

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vs.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of] Attorneys of Record.

T. M. REED, Nome, Alaska.

O. D. COCHRAN, Nome, Alaska.

Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska.

GEORGE B. GRIGSBY, Nome, Alaska.

IRA D. ORTON, Nome Alaska.

Attorneys for Defendant. [1*]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINQUIST,

Plaintiff.

vs.

H. C. AMES,

Defendant.

Complaint.

Plaintiff complains of defendant and for cause of action alleges:

1st. That plaintiff at all times herein stated was and now is the owner in fee (subject only to the paramount title to the United States), and entitled to the possession of that certain mining claim known and described as No. Thirty-two (32) Above Allen's Discovery, on the Kougarok River, in the Kougarok Mining and Recording Precinct, in the District of Alaska, particularly descibed as follows:

Commencing at the initial stake, being the lower center end stake, thence in a northerly direction as

*Page-number appearing at foot of page of original certified Record.

near as practicable at right angles to the general course of the stream 330 feet to corner stake No. 1; thence at right angles in a westerly direction upstream as near as practicable to the general course thereof 1320 feet to corner stake No. 2; thence in a southerly direction at right angles 330 feet to the upper center end stake; thence continuing on the same line 330 feet to center stake No. 3; thence at right angles in *a* easterly direction down-stream as near as practicable to the general course thereof 1320 feet to corner stake No. 4, thence [1a] at right angles 330 feet to the place of beginning. Said mining claim adjoining No. 31 Above Allen's Discovery on the Kougarok River, and the notice of location of which said claim is recorded in Vol. 32, 170, of the Records of the Kougarok Recording Precinct, District of Alaska.

2d. That on the — day of February, 1912, the defendant wrongfully and unlawfully entered in, and upon, said premises and ousted and ejected plaintiff therefrom, and ever since, and now, wrongfully withholds the possession thereof from plaintiff to his damage, in the sum of Five Thousand (\$5,000) Dollars.

WHEREFORE, plaintiff prays judgment that he be entitled to the possession of said property, and that defendant be not entitled to the possession thereof, or any portion thereof.

2d. That plaintiff have judgment in the sum of Five Thousand (\$5,000) Dollars, damages and for his costs and disbursements herein.

T. M. REED,
Atty. for Plaintiff. [2]

United States of America,
District of Alaska,—ss.

N. O. Winquist being first duly sworn, deposes and says: That he is the plaintiff named in the foregoing complaint, has read over the said complaint, knows the contents thereof and believes the same to be true.

N. O. WINQUIST.

Subscribed and sworn to before me this 27th day of April, 1912.

[Notarial Seal]

T. M. REED,

Notary Public for the District of Alaska.

[Endorsed]: #2372. No. ——. In the District Court for the District of Alaska, Second Division. N. O. Winquist, Plaintiff, vs. H. C. Ames, Defendant. Complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 29, 1912. John Sundback, Clerk. By ———, Deputy. T. M. Reed, Attorney for Plaintiff. [3]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINQUIST,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Answer.

Now comes the defendant above named, and for answer to the complaint of the plaintiff herein, denies and alleges as follows:

I.

The defendant denies each and every allegation, matter and thing in the complaint alleged, and specifically denies that plaintiff has been damaged in the sum of \$5,000 or in any sum whatsoever.

For a further and affirmative defense herein, the defendant alleges:

I.

That he is the owner of, subject to the paramount title of the United States, in the possession of and entitled to the possession of that certain placer mining claim lying and being in the Kougarok Recording District, District of Alaska, and known as the Kshunti Fraction placer mining claim, described by metes and bounds as follows:

Commencing at the initial stake which is about 150 [4] yards in a westerly direction from the Kougarok River and about two miles below the mouth of Macklin Creek; running thence 660 feet in an easterly direction to stake No. 1; thence 1200 feet in a northerly direction to stake No. 2; thence 660 feet in a westerly direction to stake No. 3; thence 1200 feet in a southerly direction to the initial stake and place of beginning.

II.

That said placer mining claim was located on or about the 25th day of July, 1903, by one G. J. Mc-

Lean, by then and there marking said claim by good and substantial stakes and monuments so that its boundaries could be readily traced; making a discovery of gold thereon, and recording a notice of location thereof.

III.

That thereafter, the said locator G. J. McLean, sold and conveyed by deed in writing, the undivided one-half ($1\frac{1}{2}$) of said claim to the defendant herein, by virtue of which location and title deed, the defendant claims and owns said premises.

IV.

And if the said placer mining claim mentioned and described in the plaintiff's complaint in any manner, in whole or in part, overlaps the said Kshunti Fraction, such overlap and title thereto is junior in time and inferior in right, to the title of said defendant; and that plaintiff has no right, title or interest in and to said overlap or any part thereof.

V.

Except as hereinbefore stated, the defendant disclaims any right, title or interest in or to the premises [5] described in the complaint, and denies that he is, or has been, in possession thereof.

For a second affirmative defense, the defendant realleges and reiterates and makes a part of this defense the allegations contained in the first affirmative defense herein and alleges further:

That ever since the 25th day of July, 1903, the defendant and his co-owner and predecessors in interest, G. J. McLean, have been and are now in the actual, uninterrupted, open, adverse, notorious and

exclusive possession of the Kshunti Fraction described in said first defense herein, and of the whole thereof, and that said claim and premises were, during all of said times, well and plainly marked and defined by good, substantial, visible and permanent stakes and monuments, and so marked that the boundaries of said Kshunti Fraction could be readily traced.

WHEREFORE the defendant prays that said plaintiff take nothing by his said action, and that the defendant have judgment that the title to said Kshunti Fraction and the whole thereof, including any overlap, if any, under any location claimed by the plaintiff whatever, whether said claim be known as No. 32 Above Allen's Discovery or otherwise, and that defendant be adjudged to be entitled to the possession thereof, and that plaintiff has no right, title, estate or interest therein or any right of possession thereto, and for his costs and disbursements herein.

G. J. LOMEN,

Attorney for Defendant. [6]

United States of America,
District of Alaska,—ss.

H. C. Ames, being first duly sworn, deposes and says: That he is the defendant named in the foregoing answer; that he has read the same, knows the contents thereof, and that the same are true as he verily believes.

H. C. AMES.

Subscribed and sworn to before me this the 15th day of May, 1912.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

Service by copy of the within answer is hereby admitted at Nome, Alaska, this 15th day of May, 1912.

T. M. REED,

Atty. for Plff.

[Endorsed]: 2372. In the District Court for the District of Alaska, Second Division. N. O. Winquist, Plaintiff, vs. H. C. Ames, Defendant. Answer. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 15, 1912. John Sundback, Clerk. By ———, Deputy. G. J. Lomen, Attorney for Defendant.
[7]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINQUIST,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Reply.

Now comes the plaintiff above named, and for reply to the defendant herein, says:

That he denies each and every allegation contained in the first and second affirmative defenses in

the answer of the defendant, and the whole and each thereof.

WHEREFORE plaintiff prays judgment as in his complaint set forth.

T. M. REED,
Attorney for Plaintiff. [8]

United States of America,
District of Alaska,—ss.

I, N. O. Winquist, being first duly sworn, depose and say that I am the plaintiff in the above-entitled action and that I believe the foregoing —— is true.

N. O. WINQUIST.

Subscribed and sworn to before me this 17th day of August, 1912.

[Notarial Seal]

T. M. REED,
Notary Public for the District of Alaska.

[Endorsed]: No. 2372. In the District Court for the District of Alaska, Second Division. N. O. Winquist, Plaintiff, vs. H. C. Ames, Defendant. Reply. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Mar. 18, 1913. John Sundback, Clerk. By ———, Deputy. T. M. Reed, Attorney for Plaintiff. [9]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINQUIST,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Instructions to the Jury.

Gentlemen of the Jury:

This is an action brought by the plaintiff, N. O. Winquist against the defendant, H. C. Ames, for the recovery of the possession of a certain placer mining claim described in the complaint as No. Thirty-two (32) Above Allen's Discovery on Kougarok River, in the Kougarok Recording Precinct, District of Alaska; and describing it by metes and bounds, and alleging that the plaintiff is the owner by virtue of a location made in January, 1902.

Plaintiff further alleges that in February, 1912, the defendant wrongfully and unlawfully entered in, and upon, said premises and ousted and ejected plaintiff therefrom; and ever since and now wrongfully withholds the possession thereof from plaintiff, to his damage in the sum of Five Thousand (\$5,000) Dollars; and prays for judgment for the possession and for damages.

To the foregoing complaint, the defendant has filed an answer in which he denies each and every allegation of the complaint, and sets up by way of an affirmative defense: [10]

1. That he is the owner and in the possession and entitled to the possession of, a certain placer mining claim known as the Kshunti Fraction, situated in the Kougarok Recording District; and describing said fraction by metes and bounds alleges that said claim was located on the 25th day of July, 1903, by one G. J. McLean, by marking the boundaries thereof by substantial stakes and monuments, so that its

boundaries could be readily traced; making discovery of gold thereon, and recording a notice of location thereof.

2. That the said G. J. McLean sold and conveyed by deed in writing an undivided one-half ($\frac{1}{2}$) of said claim to defendant, and that the defendant is owner of said premises.

3. Defendant further alleges that if plaintiff's mining claim, as described in the complaint, overlaps the said Kshunti Fraction in whole or in part, such overlap is junior in time and inferior in right to the title of defendant; and that plaintiff has no right, title or interest in, or to, said overlap, or any part thereof.

4. Defendant disclaims any right, title or interest in, or to, the premises described in the complaint, except as to *that* portion as may be found to overlap the Kshunti Fraction.

As a second defense, defendant alleges that ever since the 25th day of July, 1903, the defendant and his co-owner and predecessor in interest, G. J. McLean have been and now are in the actual, uninterrupted, open, adverse, notorious, and exclusive possession of the Kshunti Fraction as described in defendant's answer. That said claim was during all said time well and plainly marked and defined by good, substantial, visible and permanent stakes and monuments, so that the boundaries could be readily traced. [11]

To the affirmative defense as pleaded by the defendant, plaintiff has filed a reply denying each and every allegation contained in the first and second

defenses. For a more particular description of the allegations contained in the pleadings, you may consult the pleadings which you will take with you to the jury-room.

In a civil case like this, the affirmative of an issue must be proved by the party alleging it, by a preponderance of the evidence. The burden of proof is upon the plaintiff to prove all the essential acts for the perfection of his location, as alleged in the complaint; and the burden is upon the defendant to prove all the steps necessary for the making of a valid location of the Kshunti Fraction, as alleged in the first affirmative answer, also the facts alleged by him in the second affirmative defense contained in the answer.

The plaintiff must recover upon the strength of his own title and not upon the weakness of defendant's title. If you should find, from a perponderance of the evidence, that the plaintiff did not perform all the acts necessary to be performed in the making of a valid location of a placer mining claim, or, if it should appear that at the time plaintiff attempted to make a location of the claim known as No. Thirty-two (32), it had been previously properly located in the name of another, and had not been abandoned nor forfeited, then your verdict should be for the defendant, irrespective of the question as to whether he had a valid location of the Kshunti Fraction.

The requisites of the valid location of a placer mining [12] claim are:

1. The premises sought to be located must be

open, unappropriated public domain of the United States.

2. There must be a discovery of gold made within the exterior boundaries of the claim.

3. The exterior boundaries of the claim must be so marked by natural objects or permanent monuments that the boundaries can be readily traced.

In a case of this character, the Judge and jury of this court have separate functions to perform. It is your duty to hear all the evidence, all of which is addressed to you, and to decide thereupon all questions of fact. It is the duty of the Judge of this court, upon the other hand, to instruct you upon the law applicable to the facts and evidence in this case, and the statute makes it your duty to accept as law what is laid down as such by the Court.

You are instructed that you, as jurors, are the sole judges of the credibility of witnesses and the weight to be attached to their testimony. Your power, however is not arbitrary, but is to be exercised with discretion and in subordination to the rules of evidence. You may take into consideration the interest the witness has, if any, in the result of the trial; his bias or prejudice, if any, for or against the parties; his mental capacity for knowledge and his means of knowing that about which he testifies; the reasonableness or unreasonableness of his statements; his demeanor on the witness stand; his candor or evasion, if either appear; and applying your knowledge and observation of human actions, motives and affairs, you will find the truth and present the same in your verdict. [13]

The law also makes it my duty to instruct you that you are not bound to find in conformity to the testimony of any number of witnesses which do not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds.

You are also instructed that a witness who is wilfully false in one part of his testimony may be distrusted by you in other parts. If you find that any witness in this case has testified falsely in one part of his testimony, you are at liberty to reject all or any part of his testimony, but you are not bound to do so; you may reject the false part and give such weight to other parts as you may think they are entitled to receive.

You are instructed that if the testimony of a witness appears to be fair, and not unreasonable, and is consistent with itself, and the witness has not been in any manner impeached, then you have no right to disregard the testimony of such witness from mere caprice and without cause. It is your duty to consider the whole of the evidence and to render a verdict in accordance with the weight of all the evidence in the case.

You are instructed that the affirmative of the issue shall be proved by the party alleging it; and, when the evidence is contradictory, your finding should be in accordance with the preponderance of the evidence. In determining upon which side the preponderance of the evidence is, you should bear in mind the rules given in these instructions for the weighing of testimony.

You are instructed that, under the laws of the district of Alaska relative to the appropriation of mining claims, it [14] is not necessary to record a notice of location in order to perfect a claim. If title to a claim has been initiated by a discovery of gold and marking of the boundaries by stakes and monuments and written notice posted on the claim, such title cannot be defeated by changing the name in the recorded notice, nor by taking down the notice which had been posted upon the claim and placing thereon a notice containing the name of another.

The main question for you to pass upon in this case is which of the parties to this litigation has the better right to the ground in controversy, under the testimony as produced in the trial and the law as given you by the Court.

I hand you herewith two forms of verdict drawn in conformity with the law. When you have retired to your jury-room, and have agreed upon your verdict, each one for himself, you should have your foreman, to be selected by yourselves, sign the one upon which you unanimously agree and return it into court as your verdict in this case.

You may take with you into the jury-room for your guidance the exhibits and the pleadings in the case.

Let the bailiffs be sworn. You may now retire, gentlemen, to deliberate upon your verdict.

J. R. TUCKER,
District Judge.

Nome, Alaska, October 15, 1914. [15]

[Endorsed]: No. 2372. In the District Court for the District of Alaska, Second Division. N. O. Win-

quist, Plaintiff, vs. H. C. Ames, Defendant. Instructions to the Jury. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 16, 1914. G. A. Adams, Clerk. By W. C. McG., Deputy. [16]

*In the District Court for the District of Alaska,
Second Division.*

JERRY SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Verdict.

We, the jury, in the *above-entitled find* for the plaintiff and that the plaintiff is entitled to the possession of the mining claim known and described as No. 32 Above Allen's Discovery, on Kougarok River, in the Kougarok Recording Precinct, Alaska, and the whole thereof as described in plaintiff's complaint, and defendant is not entitled to the possession of any part thereof, and we assess plaintiff's recovery at One Dollar.

Dated this —— day of October, 1914.

C. E. DARLING,

Foreman.

16th October, 1914.

[Endorsed]: #2372. Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Verdict. Filed in the Office of the Clerk of the District Court of Alaska, Sec-

ond Division, at Nome. Oct. 16, 1914. G. A. Adams,
Clerk. By W. C. McG., Deputy. [17]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, Now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Motion for New Trial.

Comes now the defendant in the above-entitled action and moves the Court that the verdict heretofore rendered in said action be set aside and a new trial of said action granted on the following grounds:

I.

Newly discovered evidence material to said defendant which he could not with reasonable diligence discover and produce at the trial as appears from the affidavit of G. J. Lomen, hereunto annexed and made a part hereof.

II.

Insufficiency of the evidence to justify the verdict and that said verdict is against law in this, to wit:

That there was no sufficient evidence produced at the trial to establish plaintiff's alleged location of No. 32 Above Allen's Discovery, on the Kougarok River, as alleged in plaintiff's complaint, and for the reason that there was no evidence whatever offered

at the trial to establish such location for the reason that said action was an action in ejectment and that plaintiff sought to recover the premises in controversy by a mining location thereof alleged in plaintiff's complaint to have been made on January 10th, 1902, and no [18] sufficient evidence, nor any evidence whatever, was produced upon said trial to establish such location.

III.

Errors in law occurring at the trial and excepted to by the defendant, to wit:

(a) That the Court erred in refusing to grant defendant's motion for a directed verdict made at the conclusion of the trial and before the jury had retired.

(b) That the Court erred in refusing to give the following instruction requested by the defendant:

“You are hereby instructed to find a verdict in favor of the defendant.”

(c) That the Court erred in refusing to give the following instruction requested by defendant:

“If you find from the evidence that one N. Meathe, on or about the 10th day of January, 1902, took any steps towards locating, or did any act tending to locate the premises described in the complaint, or any part thereof, then I charge you that such step or steps, act or acts, if any, done by said N. Meathe, as the agent of any other person than the plaintiff, N. O. Windquist, or in the name of another than the said plaintiff Windquist, did not inure to the benefit of the plaintiff Windquist and did not constitute any act of location on the part of said plaintiff Wind-

quist; and I further charge you that then and in that case neither said plaintiff Windquist, nor any other person acting for or on behalf of said Windquist could appropriate said acts of said Meathe, or any of them, as an act of location in the name of or for the benefit of said Windquist. And I further charge you that if said Windquist performed any act or acts in order to perfect, or necessary to perfect the location of the premises located, [19] or attempted to be located by said Meathe, with the intention of perfecting the location made, or attempted to be made by said Meathe, then such act or acts on the part of said Windquist would not operate as or constitute an original location by Windquist or inure in any manner to the benefit of said Windquist unless you find that said Meathe, in the matter of locating or attempting to locate said premises, acted as the agent of Windquist and not as the agent of another.”

(d) That the Court erred in refusing to give the following instruction requested by defendant:

“I further charge you that in Alaska it is not necessary to record any notice of location, and that when a location is made for an absent locator, whether with or without his authority, or with or without his knowledge, whatever rights are given to him by such location, vests in him at once, and even the person locating such absentee cannot take down the name of such absentee and insert the name of another whether in the notice posted on the ground, if any, or in the certificate of location prepared for record, if any.”

(e) That the Court erred in refusing to give the following instruction requested by defendant:

“I further charge you that plaintiff, in order to recover in this action, must prove the title alleged in the complaint, to wit: Title under a location made on or about the 10th day of January, 1902, notice of which location was recorded in volume 32, at page 170 of the records of the Kougarok Recording District, District of Alaska.”

GEO. B. GRIGSBY,
G. J. LOMEN,
Attorneys for Defendant. [20]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, Now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

**Affidavit of G. J. Lomen [on Motion for a New
Trial].**

United States of America,
Territory of Alaska,—ss.

G. J. Lomen, being duly sworn on oath deposes and says:

That he is one of the attorneys for the defendant in the above-entitled action; that said action came on for trial on the 14th day of October, 1914; that be-

fore the trial commenced the attorney for plaintiff N. O. Windquist moved that one Jerry Sullivan be substituted as plaintiff in said action on the ground as therein stated by counsel for plaintiff that said Jerry Sullivan had succeeded to the interest of N. O. Windquist in the premises described in the complaint and was then and there the real party in interest; that affiant did not then know nor did defendant or his counsel know that said Jerry Sullivan had theretofore and affiant alleges the fact to be that said Sullivan on or about the 5th day of November, 1913, by deed in writing on the date last aforesaid and recorded in volume 81, page 95 of the records of the Kougarak Recording District of Alaska, conveyed the interest acquired from said N. O. Windquist to one Con Kelly; that the above facts became known to affiant after the verdict rendered in the above-entitled action and could not with reasonable diligence, have been ascertained before the trial of said action, the counsel for defendant relying upon the statement made by counsel for plaintiff [21] moving for the substitution of plaintiff.

That by reason of the facts above set forth, affiant states that said action was not prosecuted in the name of the real party in interest, but in the name of said Jerry Sullivan who appears by the transfer to said Con Kelly to have parted with his interest in the premises in litigation herein.

G. J. LOMEN.

Subscribed and sworn to before me this 19th day of October, 1914.

[Notarial Seal]

D. B. CHACE,
Notary Public in and for the Territory of Alaska,
Residing at Nome. Alaska.

(My commission expires May 12, 1917.)

Service admitted of the within motion Oct. 19th, 1914.

O. D. COCHRAN,
Of Atty's. for Plaintiff.

[Endorsed]: #2372. In the District Court for the District of Alaska, Second Div. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff, vs H. C. Ames, Defendant. Motion for New Trial. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 19, 1914. G. A. Adams, Clerk. By _____, Deputy. [22]

[Order Denying Motion for a New Trial.]

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, Special 1914, term, Beginning September 15, 1914.

Saturday, January 2, 1915, at 11 A. M.

Court convened pursuant to adjournment.

Hon. J. R. TUCKER, District Judge, presiding.

Upon the convening of court, the following proceedings were had:

2372.

JERRY SULLIVAN,

vs.

H. C. AMES,

Motion for new trial, heretofore offered, argued by Messrs. Grigsby and Lomen in favor, and by O. D. Cochran and T. M. Reed, against. Matter submitted to the Court and motion denied. Exception taken and allowed to the defendant. [23]

*In the District Court for the District of Alaska,
Second Division.*

No. 2372.

JERRY SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Judgment.

This cause having come on for trial on the 16th day of October, 1914, Messrs O. D. Cochran and T. M. Reed appearing for the plaintiff and Messrs. G. J. Lomen and Geo. B. Grigsby appearing for the defendant, and both parties announcing themselves ready for trial, and a jury having been empaneled and evidence having been submitted on behalf of plaintiff and defendant, and after argument of counsel the cause having been submitted to the jury, and the jury having retired and considered their verdict upon the evidence submitted and thereupon having returned into court the following verdict: "We, the jury in the above-entitled action, find for the plaintiff, and that the plaintiff is entitled to the possession of the mining claim known and described as No. 32 Above Allen's Discovery, on the Kougarok River,

in the Kougarok Recording Precinct, Alaska, and the whole thereof as described in plaintiff's complaint, and the defendant is not entitled to the possession of any portion thereof, and we assess plaintiff's recovery at one dollar," which verdict was duly filed on said 16th day of October, in this cause in said court. [24]

And the defendant having within the time allowed by law filed a motion for new trial of this action, which said motion for new trial was on the 2d day of January, 1915, argued before the Court and submitted and overruled.

NOW THEREFORE, on motion of Messrs. O. D. Cochran and T. M. Reed, attorneys for plaintiff,

IT IS ORDERED AND ADJUDGED that plaintiff do have and recover from the defendant the possession of placer mining claim described as No. 32 Above Allen's Discovery, on the Kougarok River, in the Kougarok Recording Precinct, Territory of Alaska, and the whole thereof as described in plaintiff's complaint.

And, IT IS FURTHER ORDERED AND ADJUDGED that plaintiff do have and recover from defendant damages in the sum of one dollar, for the unlawful withholding of the possession of said property from the plaintiff, together with his costs and disbursements in this action, taxed at 205.60 dollars.

Done in open court this 9th day of January, 1915.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2372. In the District Court for the District of Alaska, Second Division. Jerry

Sullivan, Plaintiff, vs. H. C. Ames, Defendant. Judgment. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 9, 1915. G. A. Adams, Clerk. By W. C. McG. Deputy. T. M. Reed, Attorney at Law, Nome, Alaska, Attorney for Plaintiff. Orders & Judgments, Vol. 11, p. 63. C. [25]

**[Order Carrying Filing of Bills of Exceptions Over
Until Next Term.]**

*In the District Court for the District of Alaska,
Second Division.*

Term Minutes, General, 1915, Term, Beginning
January 11, 1915.

Saturday, July 3, 1915, at 10 A. M.

Court Convened Pursuant to Adjournment,
Honorable J. R. TUCKER, District Judge, Presiding.

Upon the convening of Court the following proceedings were had:

On motion of O. D. Cochran, member of bar, the preparation and filing of all bills of exceptions were carried over until next term of court. [26]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant,

Proposed Bill of Exceptions.

This cause came duly on for trial at a term of the above-entitled court held in and for the Second Division, in Nome, Alaska, on the 14th day of October, 1914, before the Honorable J. R. Tucker, Judge, and a jury, and thereupon the following proceedings were had:

Upon motion of T. M. Reed, of *attorney* for plaintiff, the name of Jerry Sullivan was substituted for that of N. O. Windquist as plaintiff, counsel stating that the said Jerry Sullivan had succeeded to all the right, title and interest of the said N. O. Windquist in the premises in controversy.

Thereupon the following proceedings were had and the following testimony introduced:

[Testimony of George J. McLean, for Plaintiff.]

GEORGE J. McLEAN called as a witness for plaintiff, being duly sworn testified as follows:

My name is George J. McLean; I have lived in the Kougarok since 1902; have followed the occupation of mining and surveying; have had twenty-five years' experience in surveying. In June, 1912, I

(Testimony of George J. McLean.)

made a survey of the mining claim known as No. 32 Above Allen's Discovery and afterwards made a plat or map of that survey. (Witness is shown map.) Yes, that is the map and correctly represents the survey made by me. There were five stakes and monuments, one marked No. 3 [27*—1†] Bull Head Fraction, one marked No. 4 Bull Head Fraction; I don't know what the Bull Head Fraction was. The stakes were there and I put them down. I believe the Kshunti Fraction was staked for me by Mr. Ames. I first learned of the Kshunti Fraction when Mr. Ames, the defendant in this action, asked me for a half interest in the claim. I did not know where it was except that it was on the Kougarok River. After I heard that the Kshunti Fraction had been located I had a conversation with Mr. Ames with reference to it.

Q. What did you tell him?

Mr. LOMEN.—Objected to as immaterial.

The COURT.—Overrule the objection.

To which ruling the defendant then and there excepted and exception allowed.

A. I told him, I said "You had better cut this Fraction business out." I said "I will have nothing to do with a claim that is jumped."

Mr. LOMEN.—Move that the answer be stricken out.

The COURT.—Overrule the motion.

To which ruling the defendant then and there ex-

*Page-number appearing at foot of page of original certified Record.

†Original page-number appearing at foot of page of Proposed Bill of Exceptions of original certified Transcript of Record.

(Testimony of George J. McLean.)

cepted and an exception allowed.

On cross-examination the witness continued as follows:

I don't know whether at the time I made the survey I found any stakes of the Kshunti Fraction or not; all the stakes I found there are marked on the map. I don't see any. There were five stakes there. I never saw any stakes marking the Kshunti Fraction. I made this map under the direction of Gus Johnson. He pointed out the stakes to me. I never knew them before that time. At the time I made the survey I don't remember seeing any stakes marking No. 32. I simply took Gus Johnson's word about the corners. Mr. Windquist sent Johnson up there with me to show me where the corners were and I made the map [28—2] according to the stakes he pointed out to me. I had a surveyor's instrument. The map is according to scale.

On redirect examination witness continued:

Gus Johnson was with me when I made the survey. Mr. Ames was also there but did not point out the stakes of the Kshunti Fraction. I was requested several years ago by Mr. Windquist to make a survey of this ground.

Q. What was the survey to be made for?

Mr. GRIGSBY.—Objected to as immaterial and self-serving.

The COURT.—Objection overruled.

To which ruling defendant then and there excepted and an exception allowed.

A. I was instructed to survey No. 32 by Mr. Wind-

(Testimony of George J. McLean.)

quist; he told me that his claim had been jumped.

(Witness excused.)

THEREUPON the map referred to in the foregoing testimony was offered in evidence for the purpose of illustration.

[Testimony of Gus Johnson, for Plaintiff.]

Thereupon GUS JOHNSON, a witness called for the plaintiff, testified as follows:

My Name is Gus Johnson. I was with George J. McLean when he made a survey of the Kshunti Fraction and No. 32 Above Allen's Discovery. I knew where the boundaries of No. 32 were; there were stakes at the corners of No. 32; there were stakes at the lower line; I knew those stakes and knew them to be stakes marking the boundaries of No. 32. I pointed them out to Mr. McLean at the time the survey was made.

On cross-examination witness testified as follows:

I first saw claim No. 32 Above Allen's Discovery in 1902, in the first part of July. I got my knowledge in regard to the stakes [29—3] of No. 32 from one Methe and Kennedy. Captain Kennedy fixed up the stakes in the spring of 1902; he told me so; that is all I know about it. The stakes I surveyed in 1912, I put there myself. I put up the stakes in 1904. There were no stakes there then at all. All I know about the original staking is what Captain Kennedy told me. They were willow stakes, 1½ to 2 inches thick, five stakes in all. There was a notice on one of them written in with a pencil. The name of N. O. Windquist was on it, I

(Testimony of Gus Johnson.)

don't know who wrote it nor who put it there. It said "N. O. Windquist, Agent," on it. The willow stakes were just stuck in the ground. Don't know whether there were any mounds or not. They were blazed. I examined the markings on the stakes. They were marked initial stake northeast corner, northwest corner, southeast corner and southwest corner. I was there prospecting in 1902. I never saw Captain Kennedy on the claim that year. No one had been on the claim to point out any of the stakes to me between January, 1902, and the time I fixed up the stakes in 1904. I never saw Mr. Windquist on the ground. I have seen Methe on the ground several times. I saw him in 1907. I did not stop to examine any of the stakes at that time. Methe and I never examined the stakes. I was on the claim in 1902, for the purpose of seeing that the stakes were up. Mr. Windquist's stakes I am referring to. Went up there to see them. I knew the claim was there. I had permission to prospect on No. 32 from Mr. Windquist. I first went to the initial stake and from there to the corners."

Q. Up to what corner?

A. I don't remember which one, to the southeast corner, I believe.

Q. Which side of the river were you on?

Mr. COCHRAN.—Object to all this cross-examination. I have only put him on here for one purpose, and I don't care to go into all his testimony at this [29½—4] time. I merely wanted to show he knew where the boundaries were.

(Testimony of Gus Johnson.)

Mr. LOMEN.—I am trying to show he didn't know anything about it at all.

The COURT.—When he comes back you may go through all this examination.

Mr. LOMEN.—If it please the Court the purpose of this testimony is to authorize this map to go in evidence as a correct plat of some claim that was located. I want to show this map was not based on the knowledge of anybody who knows anything about the claim at all and it cannot be introduced in evidence.

(Argument.)

The COURT.—I think the map is sufficiently proven.

Mr. COCHRAN.—I now offer the map in evidence if your Honor, please.

Mr. GRIGSBY.—We wish to finish our examination.

Mr. REED.—We object to immaterial matters and not directed to the exact point of the examination in chief.

Mr. LOMEN.—Before I get through with this witness I want to get evidence sufficient at least to have the jury pass upon the question as to whether those willow stakes he says he saw in 1902 were there when he fixed up the stakes in 1904. We want to find out how much he knew about it when he told the surveyor.

The COURT.—I think that is wholly irrelevant. I think the plaintiff has put the witness on the stand for a [30—5] specific purpose and I think it is

(Testimony of Gus Johnson.)

proven whether the map is to be admitted in evidence. The map is admitted in evidence.

Mr. GRIGSBY.—Our objection is there is no evidence whatever tending to identify the map as a map of the premises in controversy as claimed by plaintiff in his complaint and it is therefore immaterial; and the further objection the map is now ruled to be in evidence at a time when we are cross-examining a witness with reference to his competency and before we have closed our cross-examination.

Mr. COCHRAN.—We offer it and ask to have it marked Plaintiff's Exhibit "A."

The COURT.—All right.

To which ruling the defendant then and there excepted and an exception allowed. [31—6]

"PLAINTIFF'S EXHIBIT A"



[Testimony of N. O. Windquist, for Plaintiff.]

Thereupon N. O. WINDQUIST was called as a witness for the plaintiff and testified as follows:

My name is N. O. Windquist; I am seventy-one years old; I live in Nome, Alaska, and have lived in Nome and vicinity since 1900. By occupation am a miner. Have lived in the Kougarok Precinct. I first went to the Kougarok Precinct in 1900 to Mary's Igloo and I knew Captain Kennedy in Mary's Igloo; have known him since 1875 up to the time of his death. I lived in the Kougarok in Kruzemapa on an island about two and one-half miles from Mary's Igloo. Was in Mary's Igloo in the winter of 1901; have lived near the mouth of the Kuzitrin off and on since 1901. Was at Mary's Igloo quite often that winter. Sometime before Christmas Captain Kennedy asked me to go down and take care of his store at Mary's Igloo and said he would locate me a claim on the Kougarok. I went down sometime [33—61½] before New Year's for that purpose. I know Tom Evans. I knew Methe and Gus Johnson. They were employed by Captain Kennedy at that time. I remained at Mary's Igloo until Captain Kennedy returned from the Kougarok with Gus Johnson. Tom Evans came in at the same time, or a short time afterwards. I don't know when Methe returned. When they returned Captain Kennedy showed me a copy of a notice of location, he showed me two location notices, he said "I have located two claims for you." The location notice was signed by my name as locator, by Mr. Methe as Agent, and

(Testimony of N. O. Windquist.)

Tom Evans as a witness. I know the hand-writing of Tom Evans. It was in the spring that Captain Kennedy showed me the notices and told me to go and make a discovery. I had a camp on No. 1 Above Allen's Discovery. The notice was recorded and given to me afterwards. Old man Gunderson was the Recorder. Captain Kennedy told me to go up to the claim, No. 32 Above Allen's Discovery and make a discovery, to come up and see them and I did so. He said he had put up the stakes and the claim was O. K. I never was upon the ground before the claim was located for me. The date of location contained in the location notice was the first part of January, 1902. I have not the location notice in my possession. It was a printed notice with some writing in it. I have not been able to find a copy of it.

(Witness excused.)

[Testimony of George J. McLean, Recalled, for Plaintiff.]

GEORGE J. McLEAN, recalled, testified as follows:

I was formerly the commissioner and recorder for the Kougarok Precinct. I have seen the record of the location notice of N. O. Windquist of No. 32 Above Allen's Discovery on the Kougarok. I hold a copy of it in my hand. It is in my handwriting, written while I was commissioner. It is a copy of the record of the notice."

On cross-examination witness testified as follows:

I don't know when I made this copy or whether

I made it for Mr. Ames or Mr. Windquist. I made one for Mr. Windquist and may have made [34—7] one for Mr. Ames. I would not say if I made the copies when I was commissioner and recorder.

Mr. COCHRAN.—I offer this copy of the location notice in evidence.

Mr. LOMEN.—Waiving the objection that the copy is not certified, we object to its admission for the reason that there is no proper foundation laid.

The COURT.—Objection overruled.

To which ruling the defendant then and there excepted and exception allowed.

Paper admitted in evidence and marked Plaintiff's Exhibit "B" as follows: [35—8]

[Plaintiff's Exhibit "B"—Placer Location Notice.]
3690. PLACER LOCATION NOTICE.

Know all men by these presents that I, the undersigned, have this day in accordance with the laws of the United States of America and the local rules and regulations and being otherwise legally entitled so to do, located and claim for placer mining purposes the following described tract of land situated on Kougarok River in Kougarok Mining District, District of Alaska, being a portion of the otherwise unoccupied Public Domain and situated for mining purposes only, to wit:

Commencing at the initial stake being the lower center end stake and upon which a true copy of this notice is posted; thence in a Northerly direction as near as practicable at right angles to the general course of the stream 330 feet to corner stake No. 1, thence at right angles in a Westerly direction up

stream and as near as practicable parallel to the general course thereof 1320 feet to corner stake No. 2; thence in a Southerly direction at right angles 330 feet to the upper center end stake, thence continuing on the same line 330 feet to corner stake No. 3; thence at right angles in a Easterly direction down stream as near practicable to the general course thereof 1320 feet to corner stake No. 4; thence at right angles 330 feet to the place of beginning, being the initial stake.

This claim shall be known as No. 32 Above Allen's Discovery on Kougarok River.

Located this ten day of January, A. D. 1902, in the presence of the undersigned witnesses.

N. O. WINDQUIST,

Locator.

By N. METHE,

Agent.

Witnesses:

T. H. EVANS.

Filed for record 1 P. M., March 29, 1902.

LARS GUNDERSON,

Recorder. [36—9]

[Testimony of N. O. Windquist, Recalled, for
Plaintiff.]

N. O. WINDQUIST, recalled for plaintiff, testified as follows:

I heard the location notice just read. It is substantially the notice that was given me by Captain Kennedy when I was in Mary's Igloo. After that I went to the claim, in the latter part of June, 1902. Captain Kennedy and I examined the claim and dug

(Testimony of N. O. Windquist.)

some holes and did some panning there. I looked at the stakes and went around to all the stakes. The map on the wall, Plaintiff's Exhibit "A," is a correct map of the boundaries as I saw them. I found the location notice at that time on the initial stake. It was a willow stake marked initial stake of No. 32 Above Allen's Discovery, N. O. Windquist. I put a mound around the stake; the location notice was in a slit in the stake with a can over it. I read the notice very carefully and as far as I can see the one read in evidence is exactly the same. I went to all the corners of the claim. All the stakes were three or four feet high and marked the name of the claim and the designation of the corner. The stakes were all firmly planted in the ground. I made a discovery of gold at that time in several places by panning dirt from the holes I dug and found gold in sufficient quantities to lead me to believe that it was valuable for gold. That is the reason that I took good care of it. I know Gus Johnson. He was on the stand in this case; have known him since 1900. I talked with him about the claim in my house before I went up there, about going up there and working on the claim. I gave him full control either if he wanted to sell or work it or do anything. I left it to his best judgment. Gave him permission to take out all he wanted and do what he pleased with it, that was the understanding between us. I was on the claim again in 1912. I was there between 1912 and 1902. Cannot remember what years. Never did any work on the claim except when I went up

(Testimony of N. O. Windquist.)

and discovered gold on it myself. I had Gus Johnson and Captain Kennedy do work there [37—10] every year. After I found out the people were so bad up there I sold the claim to Jerry Sullivan, I sold it to him last year. Gave him a deed. I have no personal interest in the claim now nor any interest in this lawsuit. No one did the assessment work on this claim except Captain Kennedy and Gus Johnson. I was taking care of other ground for Gus Johnson and for Captain Kennedy and they were taking care of this ground for me. We were exchanging labor. I was on the claim in 1912 and the stakes of the claim were in the same place as when I was there in 1902. They were not the same stakes but were in the same places.

On cross-examination witness testified as follows:

The notice given me by Captain Kennedy that I have referred to was signed "N. O. Windquist by N. Methe, Agent, dated January 10th, 1902." I cannot remember whether or not Tom Evans' name was upon the first paper received by me from Captain Kennedy, that is as a witness on the location notice, it was so long ago. I testified at the former trial that the signature of Tom Evans upon the notice which was recorded was his true signature. I knew his hand-writing for he told me so. I don't remember testifying anything about his hand-writing. I know it was his signature because he told me so in Mary's Igloo. I cannot remember that Tom Evans and I had the original notice between us and that Tom Evans admitted that he signed it. He said to get them, mean-

(Testimony of N. O. Windquist.)

ing him and his friends, in some quartz locations if I saw any good ones and he said that they had located a good claim for me and that is the way it came up, and he said he had signed the location notice. In going from my cabin in Kruzemapa to No. 32 Abode Allen's Discovery in the spring of 1902 I went by boat to Mary's Igloo and from there by boat up to Birch Hill and from there walked to Checkers Town. It is about twenty miles from Mary's Igloo to Checkers Town. I first saw the location notice of No. 32 Above. [38—39—11] Allen's Discovery along in April, 1902, when it was brought me by Captain Kennedy. Between the 10th day of January, and when Captain Kennedy brought me the notice Kennedy had been all over the Kougarok, sometimes he was in Taylor, sometimes he came down and stopped with us and other times was in the upper Kougarok. Captain Kennedy did not tell me he was with Mr. Methe when Methe located the claim for me. He told me he located two claims for me. He did not tell me that he had done it personally. Going from Mary's Igloo to Checkers Town I went overland. I went to Birch Hill and then walked to Checkers Town. I went by boat from my cabin at Kuzemapa to Mary's Igloo, from Mary's Igloo by boat to Birch Hill and we pulled the boat up there and from there I walked over the hill to Checkers Town. I had to see Lars Gunderson. From Checkers Town I went on up the Kougarok. I left the Kuzitrin and went up the Kougarok. Am positive I did meet Commissioner Gunderson at Checkers Town on that

(Testimony of N. O. Windquist.)

trip. A man named Preston was there also. I do not know where he is now. He left there years ago. Gunderson is dead. Yes, Captain Kennedy is dead. Yes, I saw others on this trip. There was a man who went with me in the boat from Mary's Igloo, and there is Mr. Shelton, he is not dead. I don't know where he is. I don't remember where I met Mr. Shelton. I saw him at Shelton, a place named after him. There was a roadhouse there at that time. Checkers Town lays farther up the river; I do not know how far. I don't remember whether I stopped at Shelton on my way up or not. I don't know whether I passed the mouth of California Creek; I don't remember that name; I am not well acquainted with the upper Kougarok. I don't remember any camp on the Kougarok River below No. 32 Above Allen's Discovery except Kennedy's camp. I don't remember whether I went as far as the mouth of Taylor Creek on that trip or not. I do not know where the mouth of Taylor Creek is. I don't know whether it is above or below [40—12] No. 32. I do not know any of the tributaries between No. 32 Above Allen's Discovery. I claim title to No. 32 Above under the location made by N. Methe for me on January 10th, 1902. After I left No. 32 on this trip I went back home to Mary's Igloo. I had been gone on that trip five or six days.

Q. Did you have any provisions with you when you left Mary's Igloo?

A. I had friends all along the river and I could get all the provisions I wanted that way.

(Testimony of N. O. Windquist.)

Q. Who were your friends you had along the river?

A. My shotgun and dogs and there were Captain Kennedy and Preston and Lars Gunderson.

I do not know how far it was from my cabin in Kruzemapa to No. 32 on the Kougarok River. I was traveling in the night-time. I don't remember how many nights' walk it was. It was not two nights' walk. Maybe a little over a day, some of the night and some of the day. I think I could make the trip in twelve hours from my cabin to No. 32 Above. To-day it would take me a couple of days. I had a talk with Gus Johnson about going up there that spring and working on the claim. He had full control either if he wanted to sell or work it or do anything. I left it to his best judgment. He could take out all he wanted to and do what he pleased with it, that was the understanding. I said that when Tom Evans told me about signing my location notice as a witness the language he used was to the effect that I was to get them in some good quartz locations if I saw any good ones and that he thought they had located a good claim for me. At the time I made this trip I think I could have made it in twenty hours. I took no sleep during the trip. The character of the ground I went over was swamps and hills. Pretty near swamp the whole way. I made the distance from Checkers Town to No. 32 in one stretch, to the [41—13] best of my memory. I was seen by several persons on the way between Checkers Town and No. 32. I met a man named Larson, I think, I am not positive, I don't know where he was working. I

(Testimony of N. O. Windquist.)

don't remember who else I met. I met others. I don't remember any of them. I don't remember whether I testified on the former trial of this case that I didn't meet anybody between Checkers Town and No. 32. I knew several people on the Kougarok River in the summer of 1902. I don't remember such a creek as Neva Creek. I was on the Kougarok River on this trip during the afternoon and night and came back the next morning. I stayed on No. 32 four or five hours, maybe more, and went right back home. I slept in the open all the time on this trip. I think I slept with Judge Gunderson. I don't remember whether it was coming or going. I don't remember how many camps I passed. There might have been some tents between Checkers Town and No. 32 Above Allen's Discovery. I don't know of any roadhouse between Checkers Town and No. 32. I stopped at noon. I could get all the food I wanted to when I came to Captain Kennedy's and I took lunch from Checkers Town. Kennedy and Gunderson were the only persons I got food from on this trip. I took some lunch with me, I had two dogs.

Q. You didn't take anything with you from home?

A. Yes, sir, I did.

Q. I thought you told us you did not.

A. I never told you that, I wouldn't leave home empty-handed.

Q. What did you carry it in?

A. The dogs carried it.

Q. The dogs carried it? A pack saddle?

A. Yes, sir.

(Testimony of N. O. Windquist.)

I do not remember meeting George Thompson on my way, I might have. The same applies to Paddy Flynn. I might have met Al Wentworth. [42—14] I don't remember meeting Bill Spencer or Mike Hurley or Bert Glass or Lee Marshall, I might have. I met him several times; nor Alec Armstrong, nor Charles Merritt. I suppose I passed California Creek. I don't remember a roadhouse there. I don't remember meeting Kid Fisher at Taylor Creek. I might have met Jim Turner. I don't remember meeting Fred M. Boden.

Q. Did you meet Wm. Benty?

A. I don't understand what you mean.

I don't remember passing Arctic Creek. I don't remember meeting Jim McAllister or Bert Glass, I might have met Henry Wells and Jud Chidester. I don't remember who I met coming from my house this morning to the courthouse, it would be impossible for me to tell you. I cannot remember meeting Henry Wells or Burbank or Nels Granhome or Bobbie Brown or Jules Gunderson, or F. A. Chase or Jack Smith or Theodore Smith or Gunder Sather. I did not meet Gus Johnson; I looked for him but did not meet him. I don't remember meeting John Moberg. I met but a few men between Kennedy's camp and No. 32. Kennedy spoke to a couple of men, I don't recall their names. I did not testify at the former trial that I did not meet anybody but Captain Kennedy.

(Witness excused.)

[Testimony of Gus Johnson, Recalled, for Plaintiff.]

Thereupon, GUS JOHNSON was recalled as witness on behalf of plaintiff and testified as follows:

I am a miner by occupation. I have been in the Seward Peninsula since 1900. I went to the Kougarok Precinct in 1900; have lived there ever since. I know N. O. Windquist the witness who was just on the stand; have known him since 1901. I knew Captain Kennedy, got acquainted with him in 1901. I know N. Methe and Alec Armstrong, also Tom Evans who was present in the courtroom. Have known them since 1901. At that time I was hauling freight up to Macklin Creek from Mary's Igloo for Captain Kennedy. Tom Evans was driving horses [43—15] for Captain Kennedy. N. O. Windquist was prospecting for Captain Kennedy. Armstrong was prospecting for himself. We worked for Captain Kennedy all of that winter and the spring of 1902. I lived that winter at Mary's Igloo at Captain Kennedy's. Windquist was living in a cabin below at Kruzemapa two or three miles from Mary's Igloo. Captain Kennedy and I and Tom Rhules and Joe Moran left about the first of the year 1902, to stake some ground and were gone six or seven days. At that time Tom Evans and N. Methe were prospecting up at Macklin Creek. The mouth of Macklin Creek is about three miles northwest of No. 32 Above Allen's Discovery on the Kougarok River. When we returned to Mary's Igloo Methe had not returned. Tom Evans came down later on in February. He made out some location notices down there. I did

(Testimony of Gus Johnson.)

not at that time see any location notice of No. 32 Above.

Q. How did you learn of a location notice at that time? I don't care now how, just generally, did you learn of a location notice of No. 32 for Windquist?

Mr. GRIGSBY.—Objected to as hearsay.

The COURT.—Overrule the objection.

(To which ruling the defendant then and there excepted and exception allowed.)

A. He was talking about it.

After that I had a conversation with N. O. Windquist in which he told me I could go up there and take out all I could from No. 32. That conversation was in the spring of 1902. Pursuant to that understanding I went up there in the first part of July, 1902, and did some prospecting on No. 32 along the river up and down pretty near the whole length of the claim. I panned gravel and found colors of gold in sufficient quantities to lead me to believe that the ground was valuable for placer gold. I examined the markings of the claim No. 32 [44—16] Above Allen's Discovery in the month of July, 1902. Yes, I was with the Surveyor McLean when the map exhibit "A" was made and pointed out to him the various stakes on the ground. I found the initial stake of the claim at this point designated on the map by the letter "A." There was just one stake there in July when I went there. It was a willow stake. There were old pencil writings upon it. The words "Initial Stake of No. 32" and Windquist's name was on it. There was a location notice on that stake. The stake was

(Testimony of Gus Johnson.)

slit and the notice was folded up and put in the slit and there might have been a can over it. I read the location notice. Mr. Windquist's name was on the location notice as locator. All this happened in July, 1902. I also saw the corner stakes; they were marked the southeast corner, southwest corner, northeast corner and northwest corner of No. 32. They were all willow stakes at the various corners. They were blazed. I don't remember whether there were any mounds around the stakes or not. The boundaries of the claim were distinctly marked upon the ground. The next day I did the prospecting on No. 32. I did not thereafter return to the claim that year. I was there in 1903, in the fall, and did some prospecting and assessment work for that year on that claim for Mr. Windquist. Mr. Windquist and I were exchanging work. The work I did in 1903 on the claim was on the lower end and on the rim. (Witness points out on the map exhibit "A" the corners of No. 32 indicating the southwest, southeast, northeast and northwest corners as marked on the map.) I was on the claim in 1903 off and on quite a length of time. The stakes I saw in 1902 were not there in 1903. There had been some tundra fires in that country. I do not know what became of the stakes, had not removed them myself nor consented to their removal. I was back there in 1904, sometime in June. There were no stakes there but I replaced them, placing them in the same places they are now and in the same places that the original stakes [45—

(Testimony of Gus Johnson.)

17] were placed in 1902, and they are now in substantially the same places as they were in 1902. The stakes I placed upon the claim in 1904, were willow stakes. The stake I put at the point marked "A" on the map was the initial stake. It was a willow three feet long and I put it in the ground and put a monument around it. It was blazed. It was marked initial stake of N. O. Windquist and the number, and the stakes placed at the four corners were similar to the initial stake. I was last upon this claim in 1912. The stakes I placed there in 1904 were all there except the initial stake. It had disappeared. I pointed them out to the surveyor who surveyed the claim at that time. I worked upon this claim in 1904 for Mr. Windquist. During *these* period of years I exchanged work for Windquist every year. He did the assessment work for me and I did the assessment work on his claims. I did the work upon this claim No. 32 for Windquist in 1904, 1905, 1906, 1907 and I believe in 1908. In 1909 I had it done by Mike Blum, and also in 1910 and paid him for it by working for him. I did the work in 1911. I was over there and attempted to do the work in 1912, but got chased off by Mr. Ames. I did not work in 1913. During each of the years I have mentioned I did one hundred dollar's worth of work upon this claim, or had it done, and made out proofs of labor, swore to them and filed them of record in the Kougarok Precinct.

Cross-examination.

I have known N. O. Windquist since 1901. Be-

(Testimony of Gus Johnson.)

came his agent in April, 1902. He told me to go up there and prospect and see what I could find on No. 32. I was his agent for the purpose of prospecting and doing assessment work and looking after the claim for him. There was no assessment work to be done that year but he told me to go up and prospect and see if I could find any money and that I could take it. This conversation was in April at Mary's Igloo, at Captain Kennedy's cabin. That is not the reason I went up there, I was going [46—18] up anyhow to do some prospecting and he asked me to prospect on No. 32. I told him I would. He did not tell me to make a discovery of gold for him. I was up and down, back and forth from Mary's Igloo to Allen's Discovery several times that spring. Allen's Discovery is about four miles or five miles from No. 32. I was hauling provisions up there. I stayed up there all summer. I prospected on No. 32 in the first part of July, 1902. No one showed me the stakes, I found them myself. The location notice was at the initial stake. It read "N. O. Windquist, Locator, by N. Methe, Agent" and was signed with the name of Tom Evans as a witness. There was no name scratched or rubbed out where Windquist's name was written. I do not know in whose handwriting it was. I think it was Captain Kennedy's. I do not know whether Tom Evans' signature was in his handwriting or not. The initial stake was marked in Captain Kennedy's handwriting. The name of N. O. Windquist was on it in Kennedy's handwriting, I am pretty sure about that. The stakes were just stuck in the ground. There were no mounds

(Testimony of Gus Johnson.)

around them that I remember of. I could not find any stakes in 1903 but had no trouble locating the corners. I knew where the initial stake was. I made a mark there by digging a hole in 1902. That is the way I found where the initial stake was. I found the corners by stepping them off in 1903, and put stakes just as near as I could where the old stakes were but had nothing to go by except stepping off. Did not find any mounds. If I had found mounds I would not have had to step them off. No sir, I did not find any mounds. Oh, yes, there were piles of rock, lots of piles of rock which might have indicated the corners. I found them. Yes, I had to step off because I could not find the corners any other way. I found the corners by piles of rock and by stepping them off, both. There were some rocks at one corner on the southeast corner but at no other corner. The other piles of rock might have been burned up by the tundra fire. I don't remember whether it was a tundra fire or what it was destroyed the stakes. I did not see Windquist up there in the summer [47—19] of 1902. The next time I saw Windquist, which was in 1903, I told him I had found prospects on No. 32, colors. It is between forty and fifty miles from Mary's Igloo to No. 32 Above Allen's Discovery. I never heard that summer that Windquist was up there, on No. 32 while I was there, nobody ever told me. The first time I ever heard of it was when Windquist told me in 1903. In 1912 when I got chased off the claim I had attempted to work upon the middle of the claim. It was not on the

(Testimony of Gus Johnson.)

ground in conflict with the Kshunti Fraction but close to the line. Mr. Ames, the defendant, was in possession of the Kshunti Fraction at that time. He was about to take out a dump. I did not attempt to work on the Kshunti Fraction. I knew the boundaries of it at that time. He chased me off the ground in conflict. He got hold of me and told me to get off the ground. Went with me a little ways. I may have said to Ames at that time that I did not know where his claim was. I don't remember whether he said to me "There is my line" and led me off the Kshunti Fraction or not. I did not attempt to go to work on No. 32 in 1912 because he stopped me. There was lots of ground there outside of the Kshunti Fraction. I did not work there, he wouldn't let me. I don't know of anybody else doing any work there in 1912. Nobody did any that I know of. At that time I stayed there two or three hours and then went home down below on the Kougarok River.

Q. You were Windquist's agent then?

A. Yes, sir.

Q. Looking after this claim? A. Yes, sir.

I filed no proof of labor or anything else that year that I remember of. [48—20]

Redirect examination.

When I went to do the assessment work on this claim in 1912, it was after the commencement of this action. I had Brose with me to help me. Mr. Ames claimed to be in possession of all of claim No. 32. He said so. He told me to get off the claim if

(Testimony of Gus Johnson.)

I wanted to keep out of trouble. "Get off the ground" he said. I guess he was referring to claim No. 32. It was in the fall of the year of 1912 that I attempted to do the assessment work on No. 32 in November. Ed Brose was with me. We worked one day close to the line of the Kshunti Fraction and the next day Ames would not let us work. The conversation between Ames and I took place on No. 32 in the hole where I was working. He told me to get out of there, that he would see that I did get out and took hold of me. I wrote Windquist about that affair. (Letter shown to witness.) Yes that is the original letter I wrote to Windquist at that time on the 30th of November, 1912. It is in the Swedish language. (Witness shown translation of letter into the English language.) Yes that is a translation of the letter.

Mr. COCHRAN.—I offer the letter in evidence together with the translation.

Mr. GRIGSBY.—Objected to as incompetent, irrelevant and immaterial and self-serving. We move that it be stricken out and that the jury be instructed to disregard it as self-serving and hearsay.

Motion denied. Letter admitted in evidence and marked Plaintiff's Exhibit "C," to which ruling defendant then and there excepted and exception allowed. [49—21]

**Plaintiff's Exhibit "B" [Letter, November 30, 1912,
Johanson to Windquist].**

Taylor, Alaska, November de 30, 1912.

Besta Winqvist,

Jag vill skrifa nagra rader till dig och lata dig veta hur jag moi jag hor halsan och moi godt.

Jag har varit uppa No. 32 och gort som arbete men Ames han ville inte lata mig arbete der vi hade lite trubel han var efter mig varje dag. men i dag sa kam han och hatade mig med slags mal sa jag lemnade jag vill inte blifva ijalslagen han sade att han shall vinna den clammen om han shall sla ijal nagra stycken sa jag vill inte taga nagan tjenst du kan ga och se Reed vad vi skall gara.halsa sa godt till Anna jag anskar att han mar godt.

Jag innesluter en kar halsneng fran mig till dig.

GUST JOHANSON.

(Translation of letter written from Taylor, Alaska,
by one Gus Johnson to N. O. Windquist, Nome,
Alaska.

Taylor, Alaska, November 30, 1912.

I have been up on No. 32 and done some work but Ames did not want me to work there. We had a little trouble. He was after me every day but to-day he came and threatened me with violence and I left as I did not wish to be pounded to death. He said that he would win that claim if he had to kill a number of persons so I did not wish to take any further chances and I left. You can go and see Reed about what we shall do.

Yours,

GUS JOHNSON. [50—22]

Recross-examination.

I think I was south of the line of the Kshunti Fraction when I went up there to do the work on No. 32 Above Allen's Discovery in 1912. I am not positive. I might be mistaken. I do not know whom the Bull Head Fraction was staked for; it was not for Mr. Ames. I did not know if he claimed it or not. He told me that he claimed all of No. 32 in a conversation we had sometime before that. I did not know Ames claimed the Kshunti Fraction in 1904. Never heard of it at that time. Might have heard of it in 1905. I knew it long before this action was commenced and knew where the south line of it was. From 1905 on Mr. Ames had never interfered with my working on the lower part of No. 32. That is where I had done all my work. I never did any north of that line. Ames had been on the Kshunti Fraction before 1912. I don't think I ever done any work on the Kshunti Fraction.

Re-redirect Examination.

Mr. Ames tried to hit me twice when he put me off the claim. Broste was down in Ames' cabin. He could not get out because he was locked in.

Re-recross-examination.

That was in 1912 when we were doing the assessment work. Broste was locked in Ames' cabin. Ames called him down to the cabin and locked him in. At least that is what Broste said. It is not a fact that prior to 1912 I, as agent for Windquist, and Mr. Ames, the defendant, established a line between the Kshunti Fraction and No. 32. We did not

(Testimony of Gus Johnson.)

establish any line. I don't remember whether or not I had a conversation with Ames in 1911 on the claim or in the vicinity of it, in which I told him that I had authority to handle the ground, and Mr. Ames and I did not agree upon a boundary line pursuant to such conversation. I don't remember whether I had a conversation about [51—23] that or not. I was up there in 1911 doing the assessment work in the fall sometime. I don't remember having any conversation at that time with Mr. Ames in the presence of myself and Mr. Ames on the claim or in the vicinity of the claim with reference to establishing a boundary line. I never established any line, I don't remember anything that was said with reference to whether I had authority to handle the claim or not. I will not swear that it did not happen. I don't know what was said. There was a conversation but I don't remember what we said.

Q. Will you swear that conversation I related to you did not take place? Answer yes or no.

A. I don't understand.

Q. All right, you don't understand. Now, did you not at that time, in conjunction with Ames, establish a boundary line between the Kshunti Fraction and No. 32?

A. I never established any boundary line nor agreed upon a boundary line. I don't remember any talk about that. Tom Chase was with me in 1911 doing the work.

I was Windquist's agent at that time and had authority to handle the claim. Mr. Ames did not

(Testimony of Gus Johnson.)

offer to throw off a small portion of the Kshunti Fraction to effect a settlement and avoid litigation. He said he would not give one inch. At that time I was working pretty close to the same place that I attempted to do the work in 1912.

Re-re-redirect Examination.

I had no authority from Windquist to throw off any of the claim.

(Witness excused.) [52—24]

[Testimony of Jerry Sullivan, the Plaintiff, in His Own Behalf.]

JERRY SULLIVAN, plaintiff, called in his own behalf, after being duly sworn testified as follows:

Direct Examination.

I did have a deed from Windquist to No. 32 Above Allen's Discovery but I have lost that deed and some other papers since I came to this town. The last I remember of having it was on the morning of the 4th of this month when I left my cabin on Trinity Creek in the Kougarok District. I have a copy of the deed. (Referring to paper handed him by counsel.) This is the deed given me to-day by Mr. Windquist. I have searched for the other deed that I lost on the 4th of this month and have not been able to find it. The first deed was given to me on the 19th of May, 1913.

(Deed admitted in evidence and marked Plaintiff's Exhibit "D" as follows:)

Plaintiff's Exhibit "D" [Deed].

THIS INDENTURE made the 15th day of October in the year of our Lord one thousand nine hundred and fourteen BETWEEN N. O. Windquist of Nome, in the District of Alaska, the party of the first part, and Jerry Sullivan, of Kougarok Precinct, Alaska, the party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One (\$1.00) Dollars, Gold Coin of the United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quit-claimed and by these presents do grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns all the right, title and interest of the party of the first part in and to that certain mining claim known and described as Number Thirty-two (32) Above Allen's Discovery on the Kougarok River in the Kougarok Recording Precinct in the District of Alaska. This deed is given to confirm a deed heretofore executed by the first party on May 19th, 1913 to, and delivered to said second party, conveying all my interest then and therein to second party.

TOGETHER with all and singular the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the

estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, and to his heirs and assigns forever.

[53—25]

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

N. O. WINDQUIST. (Seal)

Signed, sealed and delivered in the presence of:

T. M. REED.

O. D. COCHRAN.

United States of America,
District of Alaska,—ss.

On this 15th day of October, A. D. One thousand nine hundred and fourteen, personally came before me the subscriber, a notary public in and for said district, the within-named N. O. Windquist, to me personally known to be the identical person described within and who executed the within instrument and acknowledged to me that he executed the same freely, for the uses and purposes therein mentioned.

WITNESS my hand and seal this 15th day of October, 1914.

[Seal]

T. M. REED,

Notary Public in and for the District of Alaska.

(Testimony of Jerry Sullivan.)

I did have the location notice of No. 32 given to me by Windquist. I last saw it on the morning of the 4th of this month. Have searched diligently for it and for the other papers including the deed that I had together, and have not been able to find them anywhere.

Cross-examination.

I knew of this litigation when I bought this property. I did not consider that I was buying a lawsuit. I knew I was buying the claim from the rightful owner. I had the deed in my cabin prior to the 4th of this month. I carried it in my pocket. I had the deed in the same coat pocket as the notice of location. Also a letter that Tom Evans had written to me in regard to some assessment work and the proof of labor, all in the same pocket. I did not have the deed and notice of location in my pocket at the time I showed the letter from Evans to Mr. Grigsby in his office. I first discovered the [54—26] loss of the deed and notice when I was up in Judge Reed's office. This was on the 9th of this month. I thought I had left them up to my cabin but I could not find them afterwards although I searched diligently. I am sure I had the deed and location notice in Nome. The only place I took the papers out was up in Windquist's cabin. I am sure I took the papers from there to my cabin. I did look in Windquist's cabin for them afterwards thinking I might have left them there but was almost positive that I did not.

Q. Is anyone else interested with you in this title

(Testimony of Jerry Sullivan.)

that you claim to have acquired from Mr. Windquist?

A. There is not.

Q. No one at all? You own it all?

A. Yes, sir.

Q. All the Windquist interest yourself?

A. Yes, sir, all of No. 32.

(Plaintiff rests.)

DEFENDANTS THEREUPON INTRODUCED
THE FOLLOWING TESTIMONY:

[Deposition of N. Methe, for Defendant.]

The deposition of N. METHE was offered and read in evidence as follows:

Q. State your name, age, residence and occupation?

A. Narcisse Methe, 51 years old, 70 Jouvette Street, New Bedford, Mass. Carpenter and joiner.

Q. Where did you reside during the period from 1901 to 1909 inclusive?

A. In the Kougarok Recording District, District of Alaska, except in the winter of 1903, 1905 and 1906—I spent those winter seasons with my family where I am now living. [55—27]

Q. Were you in 1901 or 1902 acquainted with one Heinze, and if so where did you know him and when did you become acquainted with him?

A. I was acquainted with Heinze in the fall of the year 1900 at the mouth of Sinrock River.

Q. At said times in 1901 and 1902 were you acquainted with T. H. Evans, J. C. Kennedy, John Moberg, L. A. Peel, A. C. Armstrong and N. O. Windquist?

(Deposition of N. Methe.)

A. During 1901 and 1902 I became acquainted with T. H. Evans, J. C. Kennedy, John Moberg, A. C. Armstrong, but as to L. A. Peel, I do not remember that name; and N. O. Windquist, I have seen him at Mary's Igloo once or twice in the winter of 1901.

Q. Did you ever locate a claim known as No. 32 Above Allen's on the Kougarok River in the Kougarok Recording District, District of Alaska, either for yourself or as agent for another?

A. I did, as agent for Heinze stake No. 32 Above Allen's Discovery on the Kougarok River, District of Alaska.

Q. If you answer that you did locate a claim of that name as agent for another, who was the person for whom you located said claim?

A. It was Heinze I staked for.

Q. When did you make said location?

A. On or about January 10th, 1902.

Q. Were you at the time of making said location, or shortly afterwards, familiar with a claim known as No. 31 Above Allen's Discovery on the Kougarok River, also No. 8 Below Connelly's Discovery on the Kougarok River and the Kshunti Fraction?

A. Yes, later I was acquainted with No. 8.

Q. When did you become acquainted with those claims?

A. I became acquainted with No. 31 Above Allen's about the time of staking; with No. 8 later on.

Q. If, in answer to a previous interrogatory, you have stated that [56—28] as agent for one Heinze you located No. 32 Above Allen's Discovery on the

(Deposition of N. Methe.)

Kougarok River on January 10, 1902, state whom, if anyone, was present when you made said location and whether anyone assisted you in making said location?

A. Thomas H. Evans, and he assisted me.

Q. State what you did in making said location on January 10th, 1902, describing every act performed by you or any perosn who assisted you in making said location, describing the different steps you took that day with reference to locating said No. 32 Above on the Kougarok?

A. As well as I can remember, No. 31 was butting against No. 32, that is, upper northwest corner of #31 was making southeast corner of #32, crossing the river twice, inclosing the most part of the left limit. The upper center stake of No. 32 was put up on the left limit of the Kougarok River, on a little bluff as well as I can remember. Evans helped me to do this work.

Q. State whether or not you completed your location that day or whether you finished up the location at a later date?

A. We put the stakes that day and the notice later on.

Q. State whether or not at any time either prior to January 10th, 1902, or thereafter you made a discovery of gold within the exterior boundaries of No. 32 Above Allen's Discovery and if so when you made said discovery and on what part of said claim and who, if anyone, was present and what amount of gold,

(Deposition of N. Methe.)

if any, you discovered.

A. I have made many discoveries in the Kougarok, but as to No. 32 I don't remember.

Q. State whether or not you posted any location notice upon said No. 32 Above Allen's Discovery on the Kougarok at the time of making said location or thereafter and if so state whether or not any [57—29] person signed said location notice as a witness and who said person was.

A. We put up notice and Evans was the witness.

Q. If you have answered that you did post a location notice on said claim, state whether or not you caused a copy of duplicate of said notice to be recorded and what steps you took to have the same recorded.

A. I sent notice to Register by J. C. Kennedy.

Q. Who was the recorder in the Kougarok Recording District at that time?

A. I think it was the old gentleman Gunderson.

Q. To whom, if anyone, did you give said notice to be recorded? A. To Capt. Kennedy.

Q. Whose name, if any one, was given in said notice as locator and what name as a witness and what name as agent for the locator?

A. Heinze as locator, T. H. Evans as witness, and N. Methe as agent.

Q. What kind of stakes or mounds, if any, did you use in locating said claim and how many stakes or monuments, if any, and where did you place them with reference to said claim?

(Déposition of N. Methe.)

A. Willow stakes 4 or 5; one initial stake, one on each corner, but I don't remember whether we put the upper stake at that time.

Q. If, in answer to interrogatory six, you have stated that you located No. 32 Above Allen's Dis. on the Kougarok for one Heinze, state how long you have known said Heinze before said location.

A. Close on to two years as well as I can remember.

Q. Where were you living at the time of said location and who else, if anyone, was living at the same place?

A. On the Upper Kougarok River (Macklin Creek) John Moberg, T. H. Evans and some more persons whom I may not remember—the nearest people was below Allen's Discovery. [58—30]

Q. What other persons were living in the vicinity of claims known as No. 31 and 32 Above Allen's Discovery and No. 8 Below Connelly's Discovery at the time said location was made?

A. A. C. Armstrong, Charlie Merritt, W. Benty and John Allen.

Q. If, in answer to a previous interrogatory, you have stated that you gave the location notice of No. 32 Above Allen's Discovery to J. C. Kennedy to be recorded, state whether or not you authorized him at any time to make any change in said location notice with reference particularly to changing the name of the locator named therein.

A. I never authorized such a change.

Q. Did you ever authorize him to substitute the

(Deposition of N. Methe.)

name of N. O. Windquist for the name of—— Heinze in said notice?

A. No, I never authorized him to change name.

Q. Did you ever, at any time, locate any claim on the Kougarok River for N. O. Windquist?

A. No.

Q. Where were you during the months of June and July, 1902?

A. Most of the time on Solomon Creek towards the head of Taylor Creek.

Q. If, in answer to the previous interrogatory, you state that you were on the Kougarok River in the vicinity of No. 32 Above Allen's Discovery or elsewhere on said river, state with whom you were living and what other persons were living in that vicinity.

A. I was living with Evans as well as I can remember—in June, but I was alone later.

Q. If, in answer to a previous interrogatory, you have stated that you located No. 32 Above Allen's Discovery on January 10, 1902, or thereafter, state whether or not you saw stakes of said claim during the spring or summer of that year and what, if anything [59—31] you did with reference to said claim?

A. I can't recollect exactly.

Q. Did you, during the months of June or July, 1902, see N. O. Windquist on the Kougarok River at the cabin of J. C. Kennedy or elsewhere in the vicinity? A. No, I never did see him.

Q. If N. O. Windquist had stopped for the period of one day or more at J. C. Kennedy's cabin at any

(Deposition of N. Methe.)

time during the months of June or July, 1902, would you have seen him and if so, tell why?

A. No, I was at Solomon Creek at that time.

Q. State whether or not it is possible that N. O. Windquist could have left Mary's Igloo in the Kougarok Recording District in the months of June or July, 1902, and gone to the claim known as No. 32 Above Allen's Discovery on said Kougarok River and stopped on the occasion of such visit at the cabin of J. C. Kennedy without your having known it.

A. I don't know, I was not there at that time.

Q. If you answer that said Windquist could not have made said trip under such circumstances without your having known it, state why and all the circumstances within your knowledge as to who lived in the vicinity at that time and what stopping places if any there were for travellers.

A. I do not know.

Q. Were you on No. 32 Above Allen's Discovery on the Kougarok River after the months of June and July, 1902, during the same year and did you, after said months, see any other stakes on said claim other than those placed there by yourself for Heinze?

A. Later in the summer I was in Kougarok but I don't remember going on No. 32 Above Allen's Discovery.

Q. Did you examine said claim to such extent that you would have seen any additional stakes had they been there? [60—32]

A. I don't remember.

Q. Did you ever have any conversation with the

(Deposition of N. Methe.)

said N. O. Windquist with reference to his having been on said claim during the summer of 1902 or with reference to said claim and if so state what the conversation was, where it took place, and who, if any one, was present?

A. I never had such conversation.

Q. When, if ever, did you discover that N. O. Windquist claimed to be the owner of No. 32 Above Allen's Discovery on the Kougarok and did you ever have any conversation with the said N. O. Windquist or in his presence with reference to said location? If so, state the conversation, where it took place, and who was present.

A. I think it was Evans told me first.

Q. Can you draw a rough map of No. 32 Above, No. 31 Above Allen's Discovery and No. 8 Below Connelly's Discovery and if so will you please do so and hand the same to the notary taking this deposition who will mark the same Defendant's Exhibit "A" and attach it to this deposition?

A. Yes, I will.

Q. N. O. Windquist has testified in a previous trial of the above-entitled action that you as his agent, located the claim known as No. 32 Above Allen's Discovery on the Kougarok River on the 10th day of January, 1902. I will ask you whether or not you ever located said claim for the said N. O. Windquist at said time or at any other time or if you ever located any claim for the said Windquist on said river or ever, after said claim was located by you for any other person, *cause* said location notice

(Deposition of N. Methe.)

to be changed and the name of said Windquist substituted for that of the original locator?

A. No. [61—33]

Q. Did you ever have any conversation with J. C. Kennedy with reference to said claim No. 32 Above Allen's Discovery on the Kougarok River in the presence of N. O. Windquist? A. No.

Q. Where did Heinze, for whom you have stated you located No. 32 Above Allen's Discovery, live at the time you made said location?

A. I don't know.

Q. What if anything do you know about the Kshunti Fraction on the Kougarok River?

A. Ames told me he staked it.

Q. State any other fact within your knowledge affecting the location of said No. 32 Above Allen's Discovery on the Kougarok River?

A. I know nothing else more than I have stated.

Cross-interrogatories and Answers.

Q. State when you first went to the Kougarok Recording Precinct. A. Spring of 1901.

Q. State whether or not you were upon the premises now known as No. 32 Above Allen's Discovery on the Kougarok River, Kougarok Recording Precinct, Alaska, before January 1st, 1902, and if so, state the date and who, if anyone, was with you upon said premises.

A. Do you remember that I was there before 1902.

Q. If you state that in January, 1902, you located a mining claim known as No. 32 Above Allen's Discovery on the Kougarok River, give the full name of

(Deposition of N. Methe.)

the person for whom you located said claim and the day of the month when the same was located? What hour of the day you made such location and who assisted you, if any one, in making such location. [62—34]

A. Heinze on or about January 10th, 1902, in the afternoon. Thomas Evans helped me.

Q. How many persons were with you when you located said claim and how many claims did you and your party locate that day?

A. I cannot remember any one but Evans nor the number of claims we staked.

Q. If in answer to the last interrogatory you state that yourself, T. H. Evans, L. A. Peel and A. C. Armstrong located several claims that day, please state the manner of location of each of these claims.

A. I don't remember this Peel, but Evans and Armstrong and myself staked quite a few claims.

Q. Did you and the said Evans, Peel and Armstrong not locate eight or ten claims on that day by one of the party taking a center line, one of the party taking the east side line and one of the party taking the west side line, and walk up the river, placing stakes at what you considered every 1320 feet, and was that not all you did in locating those claims? If not, what else did you do on that day?

A. I can't recall the manner in which we staked the rest of the ground.

Q. State as near as you can remember the hour of the day you located No. 32 Above Allen's Discov-

(Deposition of N. Methe.)

ery, and who, if anyone, assisted you in making such location.

A. Some time in the afternoon, Thos. Evans helped me.

Q. How many stakes did you set or cause to be set at each corner of the location?

A. One initial stake and one on each corner.

Q. State whether or not at the time of making such location there was much or little snow on the ground.

A. There was quite a lot of snow in some places.

Q. Is it not a fact that on that day the weather was extremely [63—35] cold?

A. It was cold.

Q. Describe the stakes used by you in locating No. 32 Above Allen's Discovery. Were they not willows? If so, state the size and length of the stakes and whether these stakes were placed into the ground or simply placed in the snow.

A. Willow stakes, the longest we could get in the Kougarok. Part in ground and part in snow.

Q. State whether or not you placed a center end stake on the south boundary of said claim adjoining the north center end stake of No. 31 Above Allen's Discovery, or whether one stake designated the upper center end of No. 31 Above Allen's Discovery and the lower center end of No. 32 Above Allen's Discovery.

A. No. 32 was staked adjoining No. 31.

Q. Likewise state whether or not you placed a stake adjoining the northwest corner of No. 31

(Deposition of N. Methe.)

Above Allen's Discovery to designate the southwest corner of No. 32 Above Allen's Discovery.

A. Refer to map.

Q. State whether or not there were two stakes placed by you at the northeast corner of No. 31 Above Allen's Discovery, and one of these stakes being marked southeast corner of No. 32 Above Allen's Discovery. A. Refer to map.

Q. State whether or not No. 32 Above Allen's Discovery as located by you followed the course of the Kougarok River, or whether it extended so as to cover the left limit of said river.

A. It didn't follow exactly the course of the river, but it covered most part of the left limit.

Q. Is it not a fact that you never completed the location of No. 32 Above Allen's Discovery on the Kougarok River, but only set two stakes? [64—36]

A. No. 32 was staked with five stakes as well as I can remember.

Q. Is it not a fact that at the time you located those claims you were working in the employ of Captain J. C. Kennedy, and located those claims at his request, and were supposed to locate the same for such persons as he might designate?

A. I was working for Captain Kennedy but I had a perfect right to stake for whoever I wished and I staked that claim for Heinze.

Q. Did you or Heinze, to your knowledge, ever reset the stakes placed by you on No. 32 Above Discovery? If so, when?

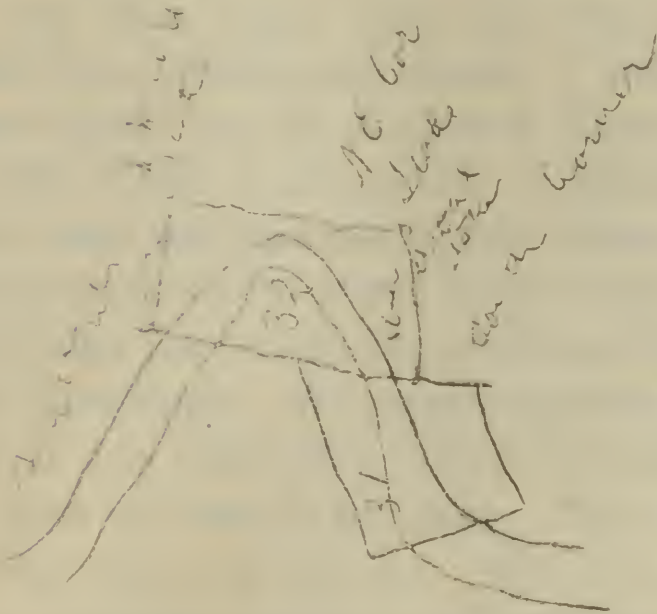
A. No, I had nothing more to do with it.

(Testimony closed.)

Map attached to deposition of N. Methe was offered and admitted in evidence and marked “Defendant’s Exhibit 1” as follows: [65—37]

(DEFENDANT'S EXHIBIT 1)

TTA7



[Testimony of T. H. Evans, for Defendant.]

T. H. EVANS, a witness produced on behalf of the defendants, being duly sworn testified as follows:

My name is T. H. Evans. I am the T. H. Evans who has been mentioned as a witness to the location. I have lived in Alaska since 1898 and in the Kougarok Precinct since 1900. In the summer and fall of 1901 I was on Macklin Creek and along the Kougarok River. Macklin Creek is about two miles above No. 32. There were a number of persons with me, among them was N. Methe whose deposition has just been read. Also Joe Sales, Jack Blocker and Tom Rhules and others. I was prospecting for myself on the Kougarok River from above Macklin Creek to the mouth of Homestake. Homestake runs into the Kougarok River above eleven claims from No. 32 Above Allen's Discovery. I prospected that part of the river between Macklin Creek and Homestake. We prospected just as any one would at any place that looked favorable all along the river for four or five days. That was in August. The water was very low. We were trying to see if we could find anything worth locating. We supposed the ground along around Macklin Creek and Homestake had been previously located. I didn't [67—38] know by the records but there were old stakes all along, stakes of 1899. We figured these locations would run out by January, 1902. I believe that we prospected on the ground which was afterwards located as No. 32 Above Allen's Dis-

(Testimony of T. H. Evans.)

covery. We found colors of gold. I spent the winter of 1901-1902, that is the fore part of the winter on the trail, most of the winter on Macklin Creek. N. Methe and I were prospecting together. On January 10th, 1902, we were staking some claims. We commenced to stake at No. 19 Above Allen's Discovery, I believe Armstrong and Methe were with me. We staked up to No. 32 Above Allen's Discovery including No. 32 and also No. 19. We did not include No. 8. N. Methe staked No. 32 Above Allen's Discovery on the 10th day of January, 1902. I assisted in making the location. Mr. Armstrong was there but whether he saw the location I do not remember. He was with us that day. I had a conversation with Methe with reference to whom he was going to stake No. 32 for. We staked No. 31 for L. A. Peel. I asked John Moberg who he wanted to stake a claim for and he said "Stake one for L. A. Peel." He authorized me to sign his name as agent for that location. After I staked No. 31 Methe said he would stake No. 32 for a friend of his called Heinze. I didn't know who Heinze was. I assisted him in staking No. 32. Methe placed the initial stake as near as I can remember close to the edge of the river, at the upper center end of No. 31, if there was an upper center end of No. 31. I don't remember whether we completed staking that night or not but there were six stakes, four corners and center and lower end. As well as I can remember we placed the lower center stake of No. 32 butting right on to No. 31. I believe that the initial stake of No.

(Testimony of T. H. Evans.)

32 and the upper center end stake of No. 31 were together. They were willow stakes. In locating No. 32 we put down two corner stakes at the lower end and walked up on our way home and put up the upper center stake and along about the 14th [68—38½] of January, we completed staking, that is Methe finished the work while I was staking No. 8. That night that we staked No. 32 we put a notice on a stake and afterwards Methe wrote out another notice and completed his location when he fixed up his stakes on or about the 14th of January. He wrote out a new notice and placed it upon the stake by slitting the stake and sticking the notice in the slit. He prepared the notice at home where we were living then on Macklin Creek. I witnessed the notice. Heinze was mentioned in the notice as the locator and Methe as agent. That is the Methe whose deposition has just been read. I signed that location notice as a witness. About the 14th the location notice was placed upon the claim. I never witnessed any location made by N. Methe in which Windquist was named as locator nor did I ever see such a notice. The first time I ever heard that Windquist claimed No. 32 was a couple of months afterwards when it got rumored around that the notice has been switched. I never had a conversation with Windquist such as he detailed on the stand in which I admitted to him that I had witnessed a location for him. I was on Homestake Creek most of the summer of 1902. The latter part of the summer right down at the mouth of the creek and the first

(Testimony of T. H. Evans.)

part of the summer up on No. 5. I know Gus Johnson who was on the stand. He was up on Homestake on the fourth of July. I don't know just when he got there. He worked a lay on No. 2 at the mouth of Homestake that summer. I was on Homestake in July and in June. I know where Captain Kennedy's cabin was. There were on the Kougarak River in the summer, the early summer of 1902, between Kennedy's cabin and No. 32, a number of people. There was Gallagher, and Kid Fisher at the mouth of Taylor Creek. There was quite a number of us on Homestake, Bobbie Brown, Jack Smith, Theodore Smith, Gunder Sather, Gus Johnson, John Moberg, Billie Benty, John Ellingston, Jule Gunder-son and F. A. Chase. I heard Windquist testify that [69—39] he was up there in June or July and that he went to No. 32 Above. In going from Captain Kennedy's cabin to No. 32 Above he would pass Homestake and the mouth of Taylor Creek. I don't think that at that time any one would have tried to go by without seeing anybody. He would have met some one. Visitors were not frequent up there in that part of the country. It was quite an event when anyone did come up. If Windquist had been up there and visited Kennedy that summer and worked on No. 32 in June or July, unless he took pains to conceal it, it would have been generally known. Some one would have spoken of it. I think we would have heard of it at least. I did not hear of it. The first time I ever heard he had ever been up there was in the courtroom on the first trial of

(Testimony of T. H. Evans.)

this action last year, anyway the first time this case was tried. That is the first time I ever heard he claimed to have been up there in the summer of 1902. I was present at the former trial of this case. I remember the occasion of the location notice, the original location notice, purporting to have been made for Windquist by Methe, was exhibited in court, the one having my name on as a witness. It was shown to me while I was sitting over there and while I was on the stand also I believe, and I testified whether or not that was my signature on the notice. I examined the signature of T. H. Evans on that notice. It was not my signature, of that I am positive. I have never had it in my possession since. I knew where Windquist's cabin was in 1902 at Kruzemapa and where Mary's Igloo is and Birch Hill and Checkers Town. It is about sixty miles from Windquist's cabin at Kruzemapa to Captain Kennedy's on the Kougarok, according to the route Windquist detailed he travelled, and from Captain Kennedy's cabin to No. 32 was somewhere in the neighborhood of five miles. The usual route in travelling from Mary's Igloo at that time was by way of Shelton, called Lane's Landing then, then across by Dahl and then striking the river again [70—40] below the mouth of Windy Creek and following the Kougarok River up. That route would not take in Checkers Town on the trip. It is forty miles from Checkers Town to Kennedy's cabin. The travelling is not good. There were quite a few camps along the river between Kennedy's cabin and Checkers Town.

(Testimony of T. H. Evans.)

Armstrong stopped at the mouth of California. Benty was mining at the mouth of Arctic Creek and Bert Glass had a roadhouse there. At the mouth of Arizona Creek Hurley, Lee Marshall and Charles Merritt were working. Jim Turner and Fred M. Boden were working around the mouth of the North Fork of the Kougarok near Two Bit Gulch on the right limit of the Kougarok River. Harry Wells and Chidester and Granhome were working at Dreamy Gulch. Dreamy Gulch is above Kennedy's cabin between Kennedy's cabin and No. 32. There was a roadhouse at the mouth of California Creek. From Checkers Town up the river I think a man would follow the river. It is forty miles from Checkers Town to Kennedy's cabin by the shortest route, a great deal farther by following the river. Ordinarily I would want about six days at least to make the trip from Windquist's cabin at Kruzemapa by boat to Mary's Igloo then up to Birch Hill then from Birch Hill to Checkers Town and then up the river to No. 32 Above Allen's Discovery. I know Gus Johnson who was on the stand. He was up there in 1902 working at Homestake Creek. I saw him pretty frequently. He never said anything to me about prospecting on No. 32. I never knew of his doing that. I believe he did very well on Homestake for a while. I don't remember where Johnson was in 1903. I found the name of Windquist written on the lower end stake of No. 8. I asked Gus Johnson about it in 1903 and he said that he was looking for No. 32 and he thought that this lower center stake

(Testimony of T. H. Evans.)

marked "Witness" was "Windquist." No. 8 is just above No. 32. It was in 1903 that I found this name "Windquist" written on the lower end stake of No. 8. When I spoke to Johnson about writing the name on the stake he told me [71—41] he could not find any stakes for No. 32 and saw "Witness" on there and thought it must be "Windquist." He did not say anything about being the agent for Windquist with authority to look after his claim. I do not know whether he afterwards found No. 32 Above that summer or not. It was during the summer he told me he had not been able to find the stakes of No. 32. That was in 1903 I think. I don't know what work, if any, he did, on No. 32 in 1903. I know that Johnson was working there at different times but I don't know what he did or how long he stayed or anything like that or what years.

Cross-examination.

I saw Gus Johnson working there in different years. I helped him do the assessment work on the claim myself in 1907 for Windquist, that is on No. 31 but not on No. 32. I never helped him do the work on No. 32 for N. O. Windquist I am sure of that. I helped him dig a hole or two on No. 31. I didn't know who he was doing the work for, I don't know who owns No. 31 now. I think Sather and Johnson own it yet, I am not positive. Johnson and I exchanged work that same year. I did not exchange work for him on No. 32 for N. O. Windquist. I have no interest whatever in this litigation. I own a claim adjoining No. 32, I own No. 8. I suppose it

(Testimony of T. H. Evans.)

joins that piece of ground. (Witness indicates on map where No. 8 joins No. 32) No. 8 butts on to the line of No. 32 for the whole of the entire end line of No. 8 according to this map, plaintiff's exhibit "A." I have been mining on the lower end of No. 8 close to the line. Not an inch over the line. I have done underground mining on No. 8 and according to the map I probably did mine over on to No. 32 but not as No. 8 really is. According to your map probably I did. I took some gold out of it, yes, sir. I did not know the man Heinze at all and could not tell you his first name. I saw Heinze that lived at the mouth of Sinnock. All I know about this location notice of No. 32 is that it was made out in the name of [72—42] Heinze. I don't remember the initials, I know it was staked for Heinze. I don't know whether it said just "Heinze," it might have been any old initial but it was staked for Heinze. I saw the name of T. H. Evans signed to the location notice the one that was recorded in 1902. That was not my signature upon it. It was not like it. I first went to the Kougarok River in 1900. I was not working for Captain Kennedy then. I worked for Kennedy in the early part of the winter of 1901 and off and on all winter until the spring of 1902. I did not work for Captain Kennedy in the summer of 1901. I was prospecting along the Kougarok River in 1901 with N. Methe. No I did not find gold every place I prospected. We were panning up and down the river for four or five days. Might have met somebody but don't remember. We first

(Testimony of T. H. Evans.)

started prospecting from Macklin Creek. It is below Connelly's Discovery, then prospected down the river as far as the mouth of Homestake a distance of about four miles. I remember some of the places where we prospected. I don't remember the exact place on No. 32. I believe we prospected on No. 32. As well as I can remember I believe that we did. I could not tell you the exact places. To the best of my remembrance and knowledge I will swear to this Court and jury that I and N. Methe prospected within the exterior boundaries of No. 32 and that we found colors on No. 32 Above in 1901 along those bends of the river there. I say that to the best of my knowledge I did so. To the best of my remembrance we panned around those bends where No. 32 is now. We were together at times when we were doing this prospecting. We probably were a few feet apart at times and other times together. We were not very far apart, Methe and I, when we prospected on the bends of the river crossing No. 32. I was merely a witness to the location of No. 32 Above Allen's Discovery. The Heinze location I am referring to. It was located by us on the 10th of January, 1902. We located that day [73—43] from No. 19 to No. 32, eleven claims, Methe and I and Armstrong. Thirteen claims I should say. Yes, we located thirteen claims that day. The weather was pretty cold and the ground was frozen and the snow wasn't very deep. In some places it was eight or ten inches deep, in other places there wasn't any and in other places it might have been a couple of

(Testimony of T. H. Evans.)

feet deep. We had with us when we made those locations a little axe and a jackknife. The axe was just a small axe to cut willows with and we cut our willow stakes as we went along to stake the claims with. We usually cut a bunch of stakes when we came to a good willow patch and carried them along with us when we needed them. All these claims had six stakes of some kind. Some were not very large. We didn't pretend to stick them down in the frozen ground, just stuck them in the snow. I think we started out and were on the road before daylight that day. It was early morning, and I suppose it must have been around eight o'clock somewhere when we staked Number Nineteen. It might have been earlier or later. It wasn't very dark at ten o'clock in January. We probably finished staking at half past three or four o'clock. It wasn't very dark at that time. We commenced locating before it was thoroughly daylight and continued after it was dark. We put in a pretty good shift. Armstrong and Methe were with me when we located this string of claims. I went up one side of the river, I don't remember as I followed any particular side. We would go to a place, cut stakes, then probably switch back and forward around. If I remember rightly I followed mostly the right limit. Methe took the center of the claims and stepped them off and the others of us took the other side of the river. We just stuck those stakes, marking each claim, in the snow. We put some kind of a location notice on all of them. Some written on the stakes, some no-

(Testimony of T. H. Evans.)

tices that the boys had made out, and blanks ready to be filled in. I didn't see that writing on all the claims. I didn't go over to see what he was writing. I saw him from about three hundred to three hundred and thirty feet away, or somewhere in that neighborhood. I think as near as I can remember there were about eight claims that we put location notices on. I can't recollect the names of these eight claims, I remember some of them. We put a location notice on the stake of No. 32. If I remember right we had one of those forms and Methe scribbled out a location notice and he intended to put another one in its place, and put it on a stake, but I would not be positive. But the location was right on the stake, the initial stake I mean of No. 32. This stake had written on it the date of the location, I suppose, and the locator and witnesses. We finished staking No. 32 about three or four o'clock in the evening and the sun was getting pretty low then. The location notice was written on the stake about three or four o'clock on a very cold day when we had to wear gloves. I tell this jury that at that time I assisted in writing a location notice on a willow stake at that hour of the day and put it in the ground as initial stake of No. 32 [73½—43½]

We probably finished staking at half past three or four o'clock and commenced after eight o'clock in the morning. We marked the stakes of the various claims we located that day, the stakes were blazed, those that we wanted to write on. We didn't write the name of the claim on the stakes, simply the num-

(Testimony of T. H. Evans.)

bers, 1, 2, 3 and 4. The initial stakes all had "Initial stake." We wrote on the initial stakes initial stake of so and 'so. In February, 1902, it was rumored around that Windquist claimed No. 32 by reason of its having been located for him and since that time I have known that he claimed to be the owner of No. 32. I am friendly with Mr. Ames the defendant in this action. Have known Mr. Ames since 1903. I did not see Mr. Windquist when he went up to claim No. 32 in 1902 in June or July and for that reason do not think he went up there. Yes I think I saw everybody who was up there in 1902. That is twelve years ago, yes, sir. I wintered on Macklin Creek in 1911. I was down here in the month of October, 1911. I knew at that time there was to be a litigation over No. 32. I knew Mr. Ames was taking out a dump and Windquist was going to stop him. I believe that is all I heard about it. I did write up to Mr. Ames about the matter from Nome. Mr. Ames wrote down and asked me to see Mr. Grigsby and try to avoid any trouble to try and get it settled in some way and not to start anything. I wrote a letter to Mr. Ames. I did not keep a copy of it. I know the Kshunti Fraction, heard of it a few days after it was staked. At that time I heard that Mr. Ames was claiming all the ground between claim No. 31 and No. 8. I do not remember writing any such thing to Mr. Ames as that it would be much easier to fix a fraction [74—44] between No. 32 and No. 8 than to hold all the ground lying between No. 31 and No. 8. I don't remember writing anything and

(Testimony of T. H. Evans.)

wording it that way. I didn't intend to at least and never did.

Q. Examine the instrument I hand you and state whether it is a copy of a letter you wrote to Mr. Ames.

A. I don't remember of writing anything and wording it in that way. I didn't intend to at least and never did.

I know Mike Campbell who sits over there. He never showed me any letter like that at any time. If I talked about it with him I told him I wrote a letter to Mr. Ames. I don't remember ever writing a letter worded in that way. If I did I never intended it. I don't remember anything of the kind. I don't remember ever having written such a thing. Yes, I have been bothered a good deal with this litigation, not entirely on behalf of Mr. Ames. I have been helping him out. I suppose everything I done in relation to the case was in acting for him. I know Jerry Sullivan the plaintiff. I don't know where I was May, 1912. I might have discussed the case with Jerry Sullivan on No. 9 Above Connelly's Discovery in May, 1912. I made a trip or two up there to see Jerry but I don't remember for what purpose. I don't recall going up to No. 9 during that period, that is the month of May, to see Jerry Sullivan. I had a quarter interest in No. 6 Below Connelley's Discovery, yes, sir. Some two or three times I tried to deal with Jerry on that ground. I don't remember having a conversation with Jerry Sullivan in the month of May, 1912, on No. 9 Above

(Testimony of T. H. Evans.)

Connelly's Discovery to the effect that I wanted to sell him No. 6 Below so I could obtain money to come down to attend court on the hearing of the injunction in this case. I might have told him a hard luck story of some kind in a joshing way but I [75—45] certainly didn't mean it in that way. I was brought down for the hearing on the injunction. I don't remember having a conversation with Jerry Sullivan at that time in which I stated that I wanted to sell my interest in No. 6 in order to obtain money to come down to Nome to try and prevent this injunction and that while Windquist owned the claim Captain Kennedy was dead, Armstrong and Methe out of the country, that us fellows in the Kouragok would have to stick together and let no strangers in on it, I don't remember anything of the kind. I don't think it ever occurred. I don't remember stating at that time that I thought six hundred feet of No. 32, being the amount outside of the Kshunti Fraction, was enough for Mr. Windquist for what he had done on the claim, but I have tried to discourage a lawsuit between both of them. I didn't want to be dragged down here. I do not remember any such conversation. I never said anything to the effect that I was interested in this litigation to the extent that I had drifted over the line of No. 8 and had to protect myself personally in this matter, or words to that effect.

Redirect Examination.

My purpose in writing to Mr. Ames was to try and settle this controversy between Windquist and Ames without a lawsuit. I tried to discourage both parties

(Testimony of T. H. Evans.)

as much as possible. I don't think I ever tried to encourage a lawsuit between them. That map, exhibit "A," does not correctly show No. 32 as I located it. As we located No. 32 originally it did not join on to No. 8 the way it does on that map.

Recross-examination.

The location notice of this claim as we filed it is just from staking in the snow. Our intention when locating it was to take in the bend of the river and up the gulch and down to No. 31.

(Witness excused.) [76—46]

[Testimony of H. C. Ames, the Defendant, in His Own Behalf.]

And thereupon Mr. H. C. AMES, the defendant, was called as a witness on his own behalf and after being duly sworn testified as follows:

My name is H. C. Ames. I am the defendant in this action. I have lived in the Kouragok since 1900 and have known the ground in controversy since 1903. The date of the location of the Kshunti Fraction was July 25th, 1903. It was located in the name of George McLean. I made the location assisted by Ed Moran, Alex Armstrong, Jack Blocker and Joe Sales. I have noticed that map, exhibit "A," on the wall. I put my initial stake there on this corner (indicating) and put stake No. 1 about there (indicating) and corner No. 2 up here some place (indicating), it does not show on this map and I put one stake over there (indicating); the line ran along down the side of No. 8. The ground in controversy is approximately correctly shown on that map, the conflict

(Testimony of H. C. Ames.)

between the Kshunti Fraction and No. 32, but my claim extends on farther up. I did, prior to staking the claim, prospect on the ground contained within the exterior boundaries and discovered colors of gold in several places upon the claim. At the time I located the claim I did not see any stakes of No. 32. I had been all over the claim a week or so before that and was camped right close there. I did not see any stakes of No. 32 as shown on map exhibit "A" at the upper corners. If there had been any there I would have seen them. I saw stakes marked No. 32 in 1904 for the first time, about the middle of where No. 31 used to be. They were about there I should judge (indicating). They were stakes put up in 1904. (Witness points at the place marked "A" on the map or initial stake of No. 32.) I don't know who put it up. I had only gossip knowledge about it. There were no other stakes of No. 32 put up at any point in the conflict area in 1904. If there had been I would have known it. At the time I located my claim I saw stakes of No. 31 [77—47] the lower stakes and one upper stake and the lower initial stake. The lower initial was about 1400 feet from my initial stake, the initial stake of No. 31 I mean, down-stream from my claim. The upper corner of No. 31 was at my initial stake. My initial stake was at the point marked on the map as corner of No. 8. My initial stake was never at any other place and in 1903 when I located the claim I found a stake of No. 31 Above Allen's Discovery at that point. I do not know who put it there. I posted a notice of location

(Testimony of H. C. Ames.)

at the time I made the location and caused the same to be recorded. (Witness is handed a paper.) This is a copy of it; yes, sir.

Paper is offered and admitted in evidence and marked "Defendant's Exhibit 2," and read to the jury, as follows:

Defendant's Exhibit No. 2 [Notice of Placer Location.]

Copy page 132, Vol. 49.

NOTICE OF PLACER LOCATION.

The undersigned is a citizen of the United States, has discovered placer gold in the ground hereinafter described and hereby claimed for placer mining purposes; about 18' acres situated on Kougarok River, Kougarok Mining District, District of Alaska, to be known as Kshunti Fraction and described as follows:

Commencing at an initial stake which is about 150 yards in a westerly directon from Kougarok River and about two miles below the mouth of Macklin Creek, running thence 660 feet in *a* easterly direction to Stake No. 1; thence 1200 feet in a northerly direction to Stake No. 2; thence 600 feet in a westerly direction to Stake No. 3; thence 1200 feet in a southerly direction to initial stake.

All said stakes are made of —— and each is marked with its number, [78—48] direction of corner and name of claim. Adjoining claims are No. 8 below Conley's discovery on the Kougarok River and No. 31 Above Allen's Discovery on the Kougarok River. A copy of this notice is posted on the initial stake.

This location is made on this Twenty-fifth day of July, A. D. 1903.

G. J. McLEAN,
Locator.

H. C. AMES,
Agent.

ED. MORAN,
Witness.

Recorded 5 P. M., Oct. 24, 1908.

LARS GUNDERSON, Jr.,
Recorder.

By Carrie G. Lokke,
Deputy.

District of Alaska,
Second Division,
Kougarok Precinct,—ss.

This is to certify that Frank H. Thomas, U. S. Commissioner and ex-officio recorder in and for the Kougarok Precinct, in the Second Division, of the District of Alaska, has compared the within and foregoing copy of a placer location notice, with an instrument as the same appears of record in Volume 49, page 132 of the records of the said precinct and that the within and foregoing is a true and correct transcript of said record and of the whole thereof.

Witness my hand and the seal of this office, this 5 day of April, 1913.

[Seal] FRANK H. THOMAS,
U. S. Commissioner and Ex-officio Recorder. [79—
49]

I know where claim No. 31 is now. The upper corner of No. 31 is about here (designating the S.W.

corner of No. 32 as shown on the map). My stake was never down that far. Yes, I did claim ground south of the line running from the corner of No. 8 over to the point marked "A" on the map in my location. I have a deed. I used willow stakes in locating the claim except the initial stake which was a plain box stake. The stakes were marked initial stake and Nos. 1, 2 and 3. The initial stake was marked initial stake and date. The notice was posted at the initial stake. I have the deed in my possession. (Witness produces deed, deed admitted in evidence, marked Defendant's Exhibit 3, as follows:

Defendant's Exhibit No. 3 [Deed].

(Transcript of Record, No. 7,084, page 98, Vol. 53, Records of Kougarok Recording Dist.)

THIS INDENTURE, made the 24th day of March, in the year of our Lord one thousand nine hundred and five BETWEEN F. G. Doolittle, G. H. Smith of Seattle, Washington, by their attorney in fact Geo. J. McLean and George J. McLean of Igloo, Alaska, the parties of the first part, and H. C. Ames of Igloo, Alaska, the party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of one (\$1.00) Dollar, Gold Coin of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed and by these presents does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns all of their right, title and interest in and to No. 27 Above Allen's Discovery on

Kougarok River, all of No. 30 Above Allen's Discovery on Kougarok River, one-sixteenth interest in the Mahabarata Assn. Claim on Stevens Gulch, a tributary of Macklin Creek, one-half interest in the Kshunti Fraction on Kougarok River, said claims being located by parties of the first part, and recorded in the records of the Kougarok Recording Dist., to which said records reference is hereby made for a more particular description.

TOGETHER with all the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in or to the said premises and every part and parcel thereof, with the appurtenances. [80—50]

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written.

F. H. DOOLITTLE. (Seal)

G. H. SMITH. (Seal)

By their Attorney in Fact,

GEO. J. McLEAN. (Seal)

GEO. J. McLEAN. (Seal)

Signed, sealed and delivered in the presence of:

LARS GUNDERSON.

WILL JOHNSON.

United States of America,
District of Alaska,—ss.

On this 24th day of March, A. D. One Thousand Nine Hundred and Five, personally came before me Carrie G. Lokke, a Notary Public in and for said District, the within-named Geo. J. McLean to me personally known to be the identical person described within and who executed the within instrument and acknowledged to me that he executed the same freely, for the uses and purposes therein mentioned. Also known to me to be the person who subscribed the names of F. G. Doolittle and G. H. Smith to the within instrument as attorney in fact and he acknowledged to me that he subscribed the names of said F. A. Doolittle and G. H. Smith as principals and his own name as attorney in fact.

WITNESS my hand and seal this 24th day of March, 1905.

[Notarial Seal]

C. G. LOKKE,

Notary Public in and for the District of Alaska.

Filed for Record 10 A. M., March 25th, 1805. Lars Gunderson, Jr., Recorder. By Carrie G. Lokke, Deputy.

District of Alaska,
Second Division,
Kougarok Precinct,—ss.

This is to certify that I, Frank H. Thomas, U. S. Commissioner and Ex-officio Recorder in and for the Kougarok Precinct, in the Second Division of the District of Alaska, have compared the within and foregoing copy of a Deed, with an instrument as the

(Testimony of H. C. Ames.)

same appears of record in Vol. 53, page 98, of the records of the said Precinct, and that the within and foregoing is a true and correct Transcript of said record, and of the whole thereof.

Witness my hand and the seal of this office this 5, day of April, 1913.

[Seal]

F. H. THOMAS,

U. S. Commissioner and Ex-officio Recorder. [81—51]

In 1903 I did a little prospecting on the Kshunti Fraction. In 1904 I dug part of the gulch out that shows on that map, tried to work that down to get a bedrock drain and sank some other holes along the creek on the bars. I did one hundred dollars' worth of work. A whole lot more than one hundred dollars' worth. I wasn't confining myself to assessment work. Since 1904 I have performed the annual labor on the Kshunti Fraction and have done from two to six hundred dollars' worth of work every year since. I have sank more than twenty odd holes to bedrock, twenty-seven I think it was, besides drifting. It is frozen ground and used a windlass in sinking. Neither Windquist nor his agent has ever done any work on the Kshunti Fraction except in 1911, and then it was done on an agreement I had with Gus Johnson. They did their work in 1911 about three hundred feet above the lower line of the Kshunti Fraction as shown on that map exhibit "A." That was the point referred to by Johnson when he said I removed him from the claim. The work he did on the Kshunti Fraction in 1911 was at

(Testimony of H. C. Ames.)

the same point. I permitted him to work there on an agreement that he and I had,—the agreement was to settle the line, the dispute of the line between his claim and mine. He said he had the power from Windquist. He agreed to settle the line at that time and we did establish a line. I can show it on the map there. (Witness draws a line across the map indicating the line agreed upon.) I said to Johnson, “If you will settle this without any trouble I will give you that much of my claim” and he said, “Well, there would not be much left” I said, “It is only a difference of this corner and it is not much” and he said, “We will do that” and I said, “We will sink holes together next year with a boiler” and he agreed to do it the next year. That was assessment work he was doing, I had my assessment work all done. Yes, sir, we made that agreement with reference to his work. The holes that he [82—52] sank there that year were about on the line that I just drew, the line we established as the line between his claim and mine. The agreement was that the next year, I had a boiler and prospecting outfit, and I would furnish them and we would go in together and finish the hole. He dug the dirt out down to the frost, about three feet deep. It was about twelve or fifteen feet to bed-rock. That was to be the assessment work on both claims for the next year if done in that manner, if we did it the next year.

Mr. COCKRAN.—I want to move at this time to strike out all the evidence to this agreement because the same has not been coupled up or shown to have been made, if made at all, with any authority from

the owner of the claim.

(Argument.)

Mr. COCHRAN.—I am attempting to show the evidence offered by this witness is immaterial unless you can couple it up with proper authority from the owner of the ground, Mr. Windquist.

Mr. GRIGSBY.—If the Court please we are endeavoring to show exclusive possession of this ground ever since its location in 1903 and this witness has testified that nobody else has worked on the Kshunti Fraction in any year since the location of it except 1911 and he only permitted the work to be done that year on account of an agreement made by him and the agent of Windquist to establish a boundary line. It is admissible whether or not it was binding on Windquist to show whether or not he suffered an agent or any owner of a conflicting location to work on his ground whether for the purpose designated by Mr. Cochran it is admissible or not. I think it is admissible for that purpose because Windquist has testified he gave Johnson complete [83—53] authority to do what he pleased with his claim. Johnson thereafter was his agent every year, did all the work that was done on the claim, Windquist never went with him. He could mine it, take anything out he could and do as he pleased with it generally and under that authority, up there miles from where Windquist was, when a dispute arose he goes out and establishes a boundary line on the ground which is not a contract with reference to real estate that has to be done in writing. It is for the jury to say whether it is proof of the estab-

(Testimony of H. C. Ames.)

lishment of a boundary line or not. It is offered to show why he permitted Johnson to work on his fraction.

Mr. COCHRAN.—But the motion is to strike this out at this time because this agreement testified to by this witness has no binding force. We move to strike it out unless you tell the Court you will couple it up with authority recognized by Windquist or in writing. My motion should prevail at this time and the evidence in relation to any agreement establishing a line between the two claims should be stricken out at this time.

(Argument.)

The COURT.—I will have to rule out the evidence.

To which ruling the defendant then and there excepted and an exception allowed.

WITNESS.—(Continuing.) Johnson at that time agreed to the establishment of that line.

Q. What did Johnson say to this proposition when you made it to him?

Mr. REED.—Objected to as not binding on the plaintiff [84—54] or plaintiff's grantors unless the authority be in writing.

The COURT.—Objection sustained.

To which ruling the defendant then and there excepted and exception allowed.

WITNESS.—(Continuing.)

After Johnson did this work in 1911 I did not do any work on the Kshunti Fraction in connection with Johnson. Sank no holes with him. In 1912 Johnson attempted to do some work on the Kshunti

(Testimony of H. C. Ames.)

Fraction at the same point. A man named Broste was with him. It was in October they were up there awhile one day and came back the next day. Came from Brost's cabin a mile and a half down the river. My cabin is a little ways southeast of the Kshunti Fraction. Coming from Broste's cabin they had to pass my cabin within a couple hundred feet. I had a conversation with them when they came up the second day. I went out and asked Mr. Broste to come over to the house, that I wanted to talk to Johnson privately. He came over to the house and I, after he came in the house, went out and I had a lock on the outside of the door and I snapped the lock so as to be sure he would not come out. I had ordered them off the day before and they would not go. I thought one man was better to put off than two, that is the reason I locked him in the house and I went over there and drove Cayuse Johnson off the claim. I did not tell him at that time that I was going to have that claim if I had to kill everybody in the Kougarok. I drove him off the Kshunti Fraction. I did not at that time assert any title to the rest of that No. 32 as shown on that map, nor put anybody off from there. I never have tried to prevent their doing work on the balance of No. 32.

Mr. GRIGSBY.—Now, we will again offer the matter stricken out, if the Court please. We offer to prove the establishment [85—55] of a boundary line in the summer of 1911 between the witness and Gus Johnson as agent for Windquist, on the proof of agency already in evidence and as a full

(Testimony of H. C. Ames.)

establishment of a boundary line between those claims.

Mr. COCHRAN.—Objected to as being incompetent and not binding upon the plaintiff or his grantors.

The COURT.—Objection sustained.
To which ruling the defendant then and there excepted and exception allowed.

WITNESS.—(Continuing.) In the summer of 1902 I was at Mary's Igloo freighting on the river between Mary's Igloo, Shelton, Checkers Town and Turner. I was freighting with a scow and horse. Used a horse with a tow line, one man rode the horse and the other man rowed the boat, that was my occupation. Going from Mary's Igloo to Shelton I would go up and back the same day. Going to Checkers Town would go up one day and back the next. Was making trips nearly every day in June and July. I knew N. O. Windquist at that time, knew where he was living. Heard his testimony in reference to going from his cabin around to Mary's Igloo in a boat. I knew his boat. I knew the nature of the current between those points at that time. Part of the way it was quite a strong current between his cabin and Mary's Igloo. From Mary's Igloo to Birch Hill, you can go to Birch Hill and drift down to Mary's Igloo without rowing in an hour. It is five miles from Mary's Igloo to Birch Hill. It was not considered practicable to row up the river by anybody between those points. It was customary to tow with a line or pull it. It is the

(Testimony of H. C. Ames.)

way everybody went up the river. In freighting up and down the river we were on the right limit, Birch Hill is on the right limit. If there had been a boat left on the right limit during the time when he said he left his [86—56] boat there I undoubtedly would have seen it. I saw no boat on the river. It is seven or eight miles from Windquist's cabin around to Mary's Igloo the way a man would have to go rowing. Probably three or four miles in a straight line. It is five miles from Mary's Igloo to Birch Hill. It is six or seven miles in a straight line and probably ten miles by river from Birch Hill to Shelton. From Shelton to Checkers Town it is ten miles. It is one mile over Birch Hill. I don't think a man leaving Mary's Igloo going to Checkers Town would get there at all by rowing. The shortest way from Windquist's cabin to Mary's Igloo is walking. He would have to row himself across the river first, across the Kuzitrin. I was acquainted with the country between Checkers Town and Kennedy's camp in 1902. It was about forty miles from Checkers Town to Kennedy's camp where his cabin was in 1902. (Witness is handed a paper.) The paper I hold in my hand is a sketch of the Kougarok River and the Kuzitrin made by myself. It shows the course which Windquist said he travelled in making his trip. It shows it to the best of my ability in drawing it. It is taken from memory, from my memory and from travelling over the ground. It was made for the purpose of illustrating the route taken by Windquist approximately.

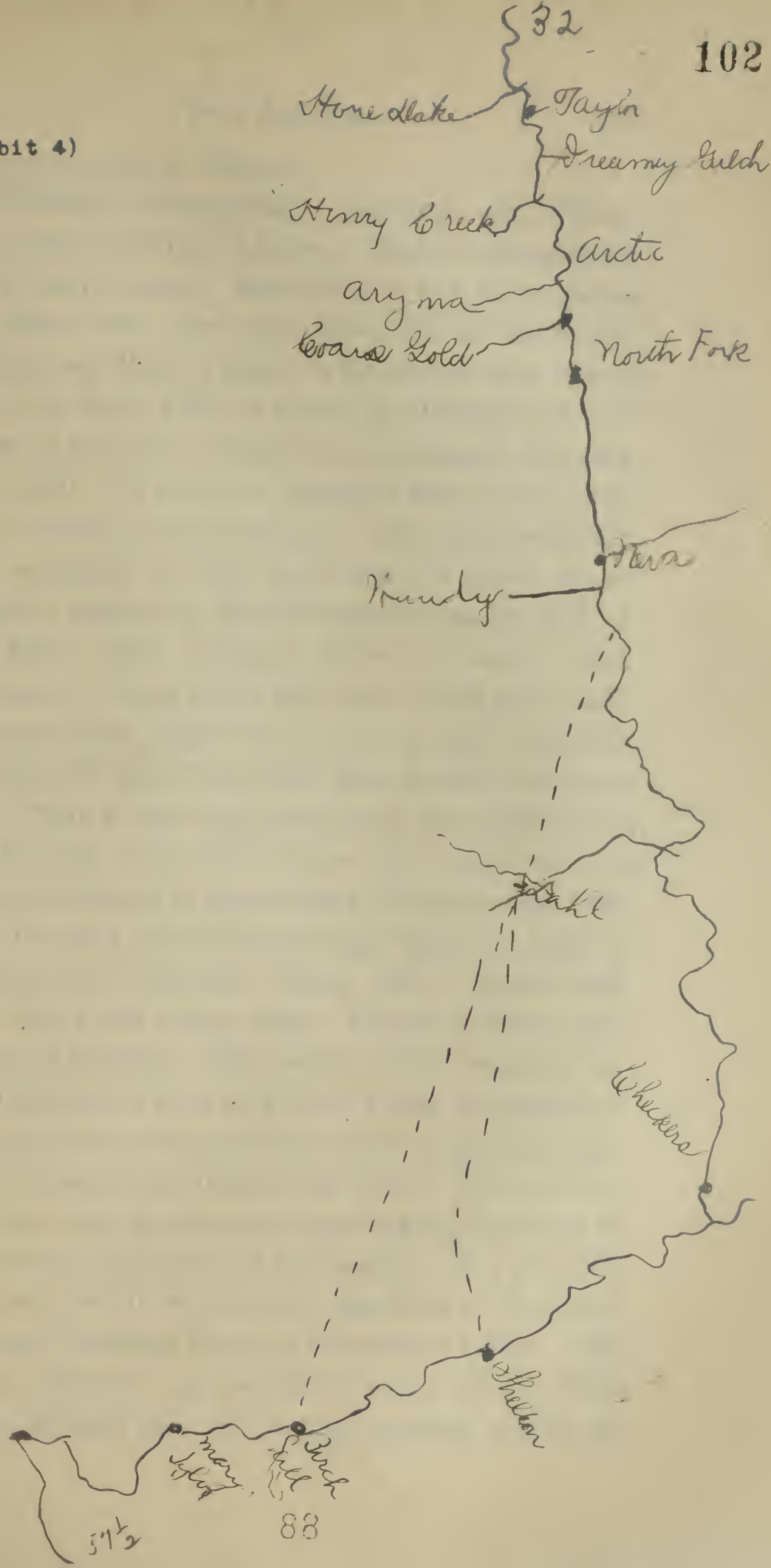
(Testimony of H. C. Ames.)

Whereupon the map was offered in evidence for the purpose of illustrating the testimony of the witness already given and further testimony.

WITNESS.—(Continuing.) This map shows the Kougarok River from Checkers Town to where Captain Kennedy's camp was and up Taylor Creek approximately. Also the Kuzitrin River from Mary's Igloo to Windquist's cabin to Checkers Town and Shelton.

Map offered in evidence for purpose of identification and marked "Defendant's Exhibit 4." [87—57]

endant's Exhibit 4)



(Testimony of H. C. Ames.)

WITNESS.—(Continuing, pointing out Windquist's cabin and Mary's Igloo.) That is a large bend in the Kuzitrin river. Birch Hill is five miles above there, Birch Hill lays right alongside of the river. In going from Mary's Igloo to Shelton a man would not go over Birch Hill, he would go alongside of it if he went on the trail. There is no necessity of going over the hill. If you were going to Dahl from Birch Hill you would go over the hill. The usual route for a man walking in 1902 from Mary's Igloo up to Kennedy's cabin and the Kougarok was by way of Birch Hill. They stopped there. I had a road house there. From Birch Hill they would go to Dahl Creek and from Dahl Creek over to the Kougarok River below Windy Creek and then up the Kougarok River. That is the way everybody was directed to go. Anybody who didn't know the road went as they were directed to go and that is the way the trail went. It was a little shorter to go that way than to go around by Checkers Town, not a great 'deal shorter but a far better road. Checkers Town lays in a bog or swamp. The nature of the country between Checkers Town and Neva Creek as shown on that map is all swamp and the river is very crooked. It is very long if one follows the river. If you don't follow the river it is swamps and lakes, hundreds of lakes in there, low ground and boggy. If a man followed the river it would take him four or five days to go from Checkers Town to Kennedy's cabin. The shortest and best way would be to go toward Dahl and cut off that flat. It is high ground as you go

(Testimony of H. C. Ames.)

toward Dahl and when you get up as far as about ten miles below Windy Creek the flat stops and it is mountainous, big mountains, that is what they call the Canyon up here, (indicating). The creeks that run into the Kougarok River when you go up the river from Checkers Town are Windy Creek here (indicating) and Neva Creek is the next one on the left limit. The Canyon starts in at the mouth of Windy Creek a little below; from that the North Fork is what you call the Canyon. The rest is high bluffs and hills all around the surrounding country. Above North Fork is Coarse Gold and above [89—58] Coarse Gold a couple of miles is Arizona Creek and one mile above Arizona Creek is Macklin Creek and about two miles above Macklin Creek is Henry Creek and a little ways above that is Captain Kennedy's cabin. It isn't marked on the map here but is between Henry Creek and Dreamy Gulch. The next creek is Taylor Creek, the next Homestake Creek and at the end of the trail is No. 32, the claim under discussion. To the best of my knowledge it would take an ordinary man going from Windquist's cabin in June or July, 1902, to proceed by boat from Windquist's cabin to Birch Hill and then walk to Checkers Town and from Checkers Town to Kennedy's cabin, five or six days. I don't believe you would make it under that. There were people along the river that year, at Shelton, Checkers Town, people on Dahl Creek and a great number of people up above but I don't know just where they were located because I was not over that year.

(Testimony of H. C. Ames.)

Cross-examination.

On the 28th day of June, 1902, I was freighting on the river. I don't know what trip I was engaged on on that date, nor whom I met on that date. There were not a great many travelling at that time. I went to the Kougarok in 1900. I knew where Windquist was living in June, 1902. I don't know where he was living in the fall of 1901. I wasn't up on the Kougarok in 1901. I never was there before 1903. From what I hear there were probably a thousand people up on the Kougarok prior to 1902, a stampede. There were trails up the Kougarok River in 1901, that is what I have been told. I was familiar with the Kougarok River in 1901 only from what I was told. It was my place to post people on the trail, that was part of the roadhouse business to get acquainted with the trails. I have lived in the Kougarok ever since that time and have become very familiar [90—59] with the Kougarok District. Yes, from my present knowledge of the Kougarok River I think Windquist could have taken a better course than the one he testified to in going up to Allen's Discovery. There weren't any towns or settlements up there, there were roadhouses. There was a roadhouse at Dahl Creek. I was not running a roadhouse in 1902. No one was running my roadhouse at Birch Hill in 1902. I quit running the roadhouse in the fall of 1901. I was freighting on the river from Mary's Igloo on up until towards fall. The first time I was up in the vicinity of No. 32 Above Allen's Discovery was in 1903. I knew Tom

(Testimony of H. C. Ames.)

Evans at that time also N. Methe. I knew that they had located some claims in January, 1902, on the Kougarok River and I knew where those claims were. I knew that Tom Evans had located No. 8. I had never heard that Evans and Methe had located No. 32. I knew they had located up as far as No. 31. I thought they had left No. 32 vacant. I located the Kshunti Fraction on July 25th, 1903. Found some colors of gold panning on the claim and placed my stakes on the claim marking the boundaries. I used a corner stake for an initial stake, a piece of box wood, the other stakes were willows. I wrote on them the numbers of the corners. I don't remember putting anything else on them. I don't know what you mean when you ask me why I kept my location notice in my pocket until 1908. I recorded it in 1903.

Mr. LOMEN.—It was probably a mistake of the Recorder in copying it.

Mr. COCHRAN.—(Reading.) Recorded 5 P. M. October 29th, 1908, Lars Gunderson, Recorder. The "3" might look like an "8." I exhibit that to you, gentlemen of the jury. The question is raised whether it is a "3" or an "8." [91—60]

Q. Did you record that notice before the 28th day of October, 1908? A. I did.

I don't know just the date I recorded that claim. I located the claim for George McLean; he told me to locate a claim for him. I did not hear his testimony to the effect that he did not tell me. After I had located the claim I told Mr. McLean about it

(Testimony of H. C. Ames.)

and that I wanted a deed for a half interest and I got a deed for a half interest. I now claim a half interest is this ground. Mr. McLean owns the other half. I have heard of Windquist's location of No. 32. I first heard of that in the fall of 1903. I was first up in that section of the country in 1903, and had no personal knowledge of the country prior to that time. I had learned of the various locations made by Evans, Methe and Armstrong in January, 1902, and I thought that they left No. 32 vacant. I did not relocate one of their locations, to wit, No. 30 at that time. I relocated it later on in 1904. I also relocated No. 27 in 1904 in the name of George McLean. No. 30 was also located in the name of George McLean, that is he was the agent of the man I located it for. I later on examined the records of No. 27 and 30 but not before I made the location in 1904, nor did I examine the records before I made the location of the Kshunti Fraction. At the time I located the Kshunti Fraction I did not know that a location of that identical ground was recorded in the name of Windquist. I did not at that time know there was any Number 32. I was told by the man who was there and helped locate those claims that there was no No. 32. That was Armstrong. He told me that in 1903. I was on this ground in controversy in 1904. I know Mr. Davidson. He was surveying the ground up there at that time, surveying along the Kougarok River. The surveyor's name who was with him was Crosby Keene I think. Armstrong was in the vicinity. He was familiar with the Kshunti

(Testimony of H. C. Ames.)

Fraction [92—61] and No. 32 and No. 8 and those claims along there. I don't know whether Gus Johnson assisted in making that survey as a flag-man or not. I saw Gus Johnson in the Kougarok in 1904. At the time that survey was made by the surveyor for Davidson the Kshunti Fraction lay where it is marked there on that map, exhibit "A." Yes, Mr. Armstrong told me about the location of those claims, the situation of them. When that survey was made in 1904 the Kshunti Fraction lay the same as it is marked there on the map, that is the upper end. The Bull Head Fraction is the claim between where the Kshunti Fraction is marked there and No. 31. The Bull Head Fraction takes in the balance of No. 32 which is not included in the Kshunti Fraction. Mike Nevins located the Bull Head Fraction. I assisted in the location of it. That was done at the time this case first came up, Mike Nevins and I located the balance of No. 32 not included in the Kshunti Fraction when this lawsuit came up. It was located in Mike Nevins' name. I was a witness. I have no interest in the Bull Head Fraction. At that time I did not have an interest in the location. The way Mike Nevins happened to come up there with me and make this location of the balance of the Windquist claim was because he heard about this lawsuit from me and came to the conclusion that there was no such claim as No. 32 and he considered the ground was open and he told me that he would go up and stake it. My initial stake was at the corner of No. 8 Below Connelly's Discovery. I tied

(Testimony of H. C. Ames.)

it to that corner of the bend in the river. My initial stake was about 150 yards in a westerly direction from the Kougarok River right alongside of stake No. 8. I don't know why I did not so state in the location notice. I cannot give you any reason why I did not so state in the location notice that my initial stake was at that corner. At that time those claims were not supposed to be worth much. I thought they [93—62] might let No. 8 claim go like they let lots of others go up there. That was one reason. I thought to tie it from the river would be as good way as any. I did what I thought was the best. I tied my claim to No. 8. I described where my claim was regardless of No. 8. I did some prospecting on the Kshunti Fraction when I made my location. I was there a good many days. We camped along there. I was probably on the claim fifty times. I was prospecting along there on the claim, probably a day all together. Then I went up to Macklin about a mile and a half above there. I returned to the claim in 1904, but did not do any active mining on the claim in 1904. I did my representing work on the claim during 1904. Did not do the work all at once but took a day or so now and then. Did the work probably along about the fourth of July, digging out this gulch here that is shown on the map. Ed Moran did some work for me also in 1904, later on in the fall. I sank a few holes.. I arrived in Nome a day before this trial started, on Tuesday. I have been working the past summer on Mascot Gulch about five miles from the ground in

(Testimony of H. C. Ames.)

controversy. I received word of the date of this trial last Saturday. I was at Taylor Creek when I learned of this case coming up for trial, three miles from the ground in controversy. It was noon on Saturday. I left Taylor Creek to come to Nome. Evans and I came down part of the way together. We arrived at Shelton Sunday night after dark. Stopped over night at Coarse Gold; got to Coarse Gold in the evening probably five or six o'clock; got into Shelton late, about eight o'clock. Stopped at Dahl Creek for lunch. We came down from Taylor Creek, leaving Taylor Creek at noon on Saturday, stopping at Dahl for lunch and stayed all night at Coarse Gold and got into Shelton the next day. [94—63]

Redirect Examination.

I did not go over the road Windquist says he went over. (Witness is handed a map drawn by witness.) I made this map according to scale as near as I could figure. It is about twelve miles from Dahl Creek to Shelton. It is about eighteen miles from Coarse Gold to Dahl. It is about seven miles from Taylor to Coarse Gold and about eighteen miles from Coarse Gold to Dahl across country the way I went. From Shelton we came to Nome by railroad. The railroad does not go around by Mary's Igloo. Nevins staked the Bull Head Fraction as a result of talking to me about this suit. I had at that time informed him that the Court had refused Windquist his injunction. I have no interest in the Bull Head Fraction. I never had an interest in the Bull Head Fraction.

(Testimony of H. C. Ames.)

At the time I staked the Kshunti Fraction I did not see any mounds at the points on map exhibit "A," where the northerly corners of No. 32 are shown. If there had been any there I would have seen them.

Recross-examination.

It is about seven miles from Taylor to Coarse Gold Creek. I said I started from Taylor about noon and got in to Coarse Gold about dinner time.

(Witness excused.)

[Testimony of Ed. Moran, for Defendant.]

Whereupon, ED. MORAN was called as a witness on behalf of defendant and after being duly sworn testified as follows:

My name is Edward Moran. I have lived in the Kouragok since 1900. I know Mr. Ames who was just on the stand and know the Kshunti Fraction. Was present when it was located. I signed the location notice as a witness. The claim was located in July, 1903. Besides myself Mr. Ames, Mr. Armstrong, Jack Blocker and Joe Sales were present. I did not know No. 8, 'Tom Evens' claim at that time.

[95—64] The initial stake of the Kshunti Fraction was placed on the raise of the hill going over the portage at the bend of the river. I guess it would be on the west side of the Fraction or the southwest. I would judge it to be the southwest corner. The river makes a kind of a bend right there. I did not go to the other corner. The initial stake was a piece of board. I generally went over the claim on my way down for groceries or anything else I wanted at the Forks. I did some work on the claim, the

(Testimony of Ed. Moran.)

Kshunti Fraction, the following year on the right limit of the river a little above the gulch. (Witness points out initial stake of the Kshunti Fraction on the map), and the place where he did the work the following year. There was writing on the initial stake but I did not examine it. I have no interest in the case.

Cross-examination.

That was my first trip up the river. I did not know anything about any of the claims in that vicinity at that time. We were working on No. 27 Above Allen's Discovery at that time. I was doing assessment work. That was before we located the Kshunti Fraction. We had been working there three or four days before we located the Kshunti Fraction. It was located in the name of McLean who was on the stand. We crossed No. 31 going up there. I did not know where No. 32 was but I had an interest in No. 30. We placed the initial stake of the Kshunti Fraction in a little mound. I didn't notice any other stakes around there. I believe there were but I could not say. I don't know whether they put a mound around or not, or whether there was a mound there before nor whether there was a stake of No. 8 around there. I could not tell you. I did not know where No. 8 was. I might have seen a stake of No. 8 at the corner where we put the initial stake but I don't remember now.

(Witness excused.) [96—65]

**[Testimony of H. C. Ames, the Defendant, Recalled
in His Own Behalf.]**

And thereupon H. C. AMES, the defendant, was recalled in his own behalf and testified as follows:

There was no trace of a tundra fire in the vicinity of the Kshunti Fraction when I was up there in 1903 nor on No. 32. If there had been a fire there in the fall or summer of 1902, I would have seen traces of it. I never destroyed or removed any of the stakes of No. 32 or any other stakes and do not know of any being destroyed by anybody.

Cross-examination.

There was not a tremendous tundra fire in the vicinity of the Kshunti Fraction in 1902. There were a few fires, one on Macklin Creek that swept over a certain section in 1903, but the main Kougarok River was all burned off in 1904, preparing for the ditches that were built in 1904. There was a large tundra fire there in 1904.

Redirect Examination.

The tundra fire of 1904 did not destroy any of the stakes on No. 32 or the Kshunti Fraction.

(Witness excused.)

Defendant rests.

**[Testimony of Jerry Sullivan, Recalled, in Rebuttal,
in His Own Behalf.]**

Whereupon JERRY SULLIVAN was recalled in rebuttal in his own behalf and testified as follows:

In the month of May, 1912, I had a discussion with Tom Evans in regard to this case which took place on No. 9 Above Connelly's Discovery. At that time

(Testimony of Jerry Sullivan.)

I had no interest in this case at all. In that conversation Mr. Evans stated in my presence in substance that Captain Kennedy was dead, that Armstrong and Methe were out of the [97—66] country and that he was the only one that knew anything about the location of No. 32, and that he had mined through No. 8 over on to No. 32, and that he had to protect himself on that account, and that he knew Windquist located and owned No. 32, but that 600 feet, being the portion below the Kshunti Fraction, was enough for him for what he had done upon the claim, and he further stated at that time that the Kougarokers must stand together and keep outsiders from getting in on the ground.

Cross-examination.

This conversation I speak of took place all at one time. Nobody was present but Tom Evans and myself. He came up to me. I have gotten written down the exact words. He came up and asked me if I wanted to buy his interest in No. 6 Above Connelly's Discovery. He said that he wanted some money to go to Nome to try and stop an injunction, that Windquist had applied for against Ames. He said "Windquist is the owner of the claim." He said, "Captain Kennedy is dead, Methe and Armstrong are on the outside and nobody knows a thing about it now but me. We have to stick together and keep strangers out." He said, "I think six hundred feet would be enough for him for what he has done on the claim." I wrote that down right after he left me. I wrote it down because I saw he was

(Testimony of Jerry Sullivan.)

forming a scheme to rob a man out of what was lawfully belonging to him. Evans and I were friendly at that time. I told him it was not much to his credit to be upholding a thief. I bought into this claim because I knew Windquist was the owner. I have been there since 1904 and I never heard any claim to it but Windquist's until 1911. I am friendly with Jim Kelliher. I spoke to him to-day. I am on speaking terms with him and I am not in competition with him in any way in regard to mining matters. Yes, I have heard that Jim Kelliher was interested in the Kshunti Fraction and also in the Bull Head Fraction. I learned. [98—67] that in 1913 after I had bought this interest. I swear that I did not know that Jim Kelliher was interested before I bought from Windquist. It is not a fact that I bought from Windquist in order to head Kelliher off. I am not particularly hostile to Jim Kelliher to-day. I advertised him out of No. 6 Above and Nos. 3 and 4 Below on Trinity Creek. I never had a dispute in my life, with Kelliher in regard to mining matters. Evans came to sell me No. 6 because, as he said, he needed the money to go to Nome on. I didn't know that Kelliher had bought No. 6 from Evans the year before. I know it now. Evans told me so later on. I think that was in 1913 after I advertised Kelliher out, or about that time. I didn't know he had an option on it before that. I never knew he was after it and wanted it. I had a three-fourths interest in No. 6 before that. I never tried to buy Evans' interest, he came to me.

(Testimony of Jerry Sullivan.)

It was before the hearing on the injunction, the day before he started down. I don't know where he made the raise to come down. I understood from him that he did not have the money and wanted to sell his ground to get the money. I have the diary with me in which I made this memorandum. (Witness produces diary.) The diary is in my own handwriting.

I have two or three different diaries up there. This book is in my handwriting, all of it. Yes, that is the only entry in the book of anything that took place at that time, I have other books with other entries in them. At the time I made this memorandum I thought Evans was trying to beat somebody out of his claim. I knew nothing about the merits of the controversy between Windquist and Ames. I knew nothing about the case at all. I never heard of the ground being claimed by anybody but Windquist until 1911. I did inform someone else about the conversation I had with Evans in May, 1912. I informed Tom Connelly about it a few daws afterwards and he said he had a similar conversation [99—68] with Evans down in Mike Blum's cabin. I told Connelly about this four or five days after it happened. I did nothing to head Evans off after I knew he was coming down to try to settle the lawsuit. I did not prefer to hold it until I could get the interest myself and then spring it. I didn't expect to get any interest at that time myself. I did not tell Windquist anything about the transaction. I bought No. 32 the 19th day of May, 1913, after the

(Testimony of Jerry Sullivan.)

first trial of this case.

Q. Now, why wasn't this information that you had, used on the previous trial?

A. Because I could not come down myself and I wasn't much acquainted with Windquist and I didn't want to come down.

I had this information myself for a year or more and Windquist didn't know anything about it. I believe that I told Mike Campbell about it right here in town about the time I bought the claim. All of this was written down by myself at the same time.

Mr. LOMEN.—We offer the memorandum in evidence.

(Memorandum admitted in evidence with the permission to plaintiff to withdraw same after being read to the jury.)

[Memorandum Read to Jury.]

Mr. Lomen reads memorandum to jury as follows:

“He said he had to protect himself. I asked him in what way. He said he had drifted a little over the line. I said, ‘I don't think the old man will cause you any trouble.’ He said, ‘There would be no trouble but for Gus Johnson and if I can get to town and see one party before he gets there I will stop the injunction.’ ‘While you say you witnessed the staking for Windquist, now you want to stop the injunction on a man that is trying to steal a part of the claim from him. Is that fair.’? [100—69]

WITNESS.—(Continuing.) He said at that time to me that he had witnessed the staking for Wind-

quist and that Methe had located a claim for Windquist.

Plaintiff rests in rebuttal.

[Testimony of Tom Evans, Recalled in Surrebuttal, for Defendant.]

Whereupon TOM EVANS was recalled on behalf of defendant in surrebuttal, and testified as follows:

I sold No. 6 Above Connelly's Discovery to James Kelliher in the fall of 1911. I never told Jerry Sullivan that I had witnessed any location for Windquist, or made any location for Windquist, never at any time. I never had any such a conversation with Jerry Sullivan as is written down in that book.

Defendant rests.

[Motion for Leave to File an Amended and Supplemental Answer etc.]

Mr. LOMEN.—I move at this time for permission to file an amended and supplemental answer in this case alleging forfeiture of any claim known as No. 32 Above Allen's Discovery, if ever located, because of failure to do assessment work on the claim in 1911 and also in 1912. As far as the 1912 work is concerned it is an alleged fact that occurred subsequent to the commencement of this action.

Motion overruled, to which the defendant then and there excepted and exception allowed.

[Motion for a Directed Verdict.]

Mr. LOMEN.—I, at this time, move that the Court direct the Jury to return a verdict for the defendant.

The COURT.—Motion overruled.

To which ruling the defendant then and there excepted and exception allowed. [101—70]

AND THEREUPON and within the time allowed by the Court, the Court having been previously requested that the instructions to the jury be in writing, the defendant requested the Court to give the jury the following instructions, to wit:

[Instructions Requested by Defendant.]

“You are hereby instructed to find a verdict, in favor of the defendant.”

Which instruction the Court refused to give to the jury, to which ruling the defendant excepted and exception allowed.

And the Court refused to give the following instruction requested by defendant:

“If you find from the evidence that one N. Methe, on or about the 10th day of January, 1902, took any steps towards locating, or did any act tending to locate the premises described in the complaint, or any part thereof, then I charge you that such step or steps, act or acts, if any, done by said N. Methe as the agent of any other person than the plaintiff N. O. Windquist, or in the name of another than the said plaintiff Windquist, did not inure to the benefit of the plaintiff Windquist and did not constitute any act of location on the part of said plaintiff Windquist; and I further charge you that then and in that case neither said plaintiff Windquist nor any other person acting for or on behalf of said Windquist, could appropriate said acts of said Methe, or any of them, as an act of location in the name of or for the benefit of said Windquist. And I further

charge you that if said Windquist performed any act or acts in order to perfect, or necessary to perfect the location of the premises located, or attempted to be located by said Methe, with the intention of perfecting the location made, or attempted to be made by said Methe, then such act or acts on the part of said Windquist would not operate as or constitute an original location by Windquist or inure in any manner to the [102—71] benefit of said Windquist unless you find that said Methe, in the manner of locating or attempting to locate said premises, acted as the agent of Windquist and not as the agent of another.”

To the refusal of the Court to give such instruction the defendant excepted and exception allowed.

And the Court refused to give the following instruction requested by defendant:

“I further charge you that in Alaska it is not necessary to record any notice of location, and that when a location is made for an absent locator, whether with or without his authority, or with or without his knowledge whatever rights are given to him by such location, vest in him at once, and even the person locating such absentee cannot take down the name of such absentee and insert the name of another whether in the notice posted on the ground, if any, or in the certificate of location prepared for record, if any.”

To which refusal defendant excepted and an exception allowed.

And the Court refused to give to the jury the following instruction requested by defendant:

“I further charge you that plaintiff, in order to recover in this action, must prove the title alleged in the complaint, to wit: Title under a location made on or about the 10th day of January, 1902, notice of which location was recorded in volume 32, at page 170 of the records of the Kougarok Recording District, District of Alaska.”

To which refusal defendant excepted and exception allowed. [103—72]

AND THEREUPON counsel for both parties proceeded to address the jury and the Court proceeded to instruct the jury as follows:

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Instructions to the Jury [in Bill of Exceptions].

Gentlemen of the jury:

This is an action brought by the plaintiff, N. O. Windquist, against the defendant, H. C. Ames, for the recovery of the possession of a certain placer mining claim described in the complaint as No. Thirty-two (32) Above Allen's Discovery on Kougarok River, in the Kougarok Recording District, District of Alaska; and describing it by metes and bounds, and alleging that plaintiff is the owner by virtue of a location made in January, 1902.

Plaintiff further alleges that in February, 1912,

the defendant wrongfully and unlawfully entered in and upon said premises and ousted and ejected plaintiff therefrom; and ever since and now wrongfully withholds the possession therefrom from plaintiff, to his damage in the sum of Five Thousand (\$5,000) Dollars; and prays for judgment for the possession and for damages.

To the foregoing complaint, the defendant has filed an answer in which he denies each and every allegation of the complaint, and sets up by the way of an affirmative defense: [104—73]

1. That he is the owner and in the possession and entitled to the possession of, a certain placer mining claim known as the Kshunti Fraction, situated in the Kougarok Recording District; and describing said fraction by metes and bounds alleges that said claim was located on the 25th day of July, 1903, by one G. J. McLean by marking the boundaries thereof by substantial stakes and monuments, so that its boundaries could be readily traced, making discovery of gold thereon, and recording a notice of location thereof.

2. That the said G. J. McLean sold and conveyed by deed in writing an undivided one-half ($\frac{1}{2}$) of said claim to defendant, and that the defendant is owner of said premises.

3. Defendant further alleges that if plaintiff's mining claim, as described in the complaint, overlaps the said Kshunti Fraction in whole or in part, such overlap is junior in time and inferior in right to the title of defendant, and that plaintiff has no right, title or interest in or to said overlap, or any part thereof.

4. Defendant disclaims any right, title or interest in or to the premises described in the complaint, except as to that portion as may be found to overlap the Kshunti Fraction.

As a second defense defendant alleges that ever since the 25th day of July, 1903, the defendant and his co-owner and predecessor in interest, G. J. McLean, have been, and now are in the actual, uninterrupted, open, adverse, notorious and exclusive possession of the Kshunti Fraction as described in defendant's answer. That said claim was, during all said time, well and plainly marked and defined by good, substantial, visible and permanent [105—74] stakes and monuments, so that the boundaries could be readily traced.

To the affirmative defense as pleaded by the defendant, plaintiff has filed a reply denying each and every allegation contained in the first and second defenses. For a more particular description of the allegations contained in the pleadings, you may consult the pleadings which you will take with you to the jury-room.

In a civil case like this, the affirmative of an issue must be proved by the party alleging it, by a preponderance of the evidence. The burden of proof is upon the plaintiff to prove all the essential acts for the perfection of his location, as alleged in the complaint; and the burden is upon the defendant to prove all the steps necessary for the making of a valid location of the Kshunti Fraction, as alleged in the first affirmative answer, also the facts alleged by him in the second affirmative defense contained in the answer.

The plaintiff must recover upon the strength of his own title and not upon the weakness of defendant's title. If you should find, from a preponderance of the evidence, that the plaintiff did not perform all the acts necessary to be performed in the making of a valid location of a placer mining claim, or if it should appear that at the time plaintiff attempted to make a location of the claim known as No. Thirty-two (32) it had been previously properly located in the name of another, and had not been abandoned nor forfeited, then your verdict should be for the defendant, irrespective of the question as to whether he had a valid location of the Kshunti Fraction.

The requisites of the valid location of a placer mining claim are: [106—75]

1. The premises sought to be located must be open, unappropriated public domain of the United States.

2. There must be a discovery of gold made within the exterior boundaries of the claim.

3. The exterior boundaries of the claim must be so marked by natural objects or permanent monuments that the boundaries can be readily traced.

In a case of this character, the judge and jury of this court have separate functions to perform. It is your duty to hear all the evidence, all of which is addressed to you, and to decide thereupon all questions of fact. It is the duty of the Judge of this court, upon the other hand, to instruct you upon the law applicable to the facts and evidence in this case, and the statute makes it your duty to accept as law

what is laid down as such by the Court.

You are instructed that you, as jurors, are the sole judges of the credibility of witnesses and the weight to be attached to their testimony. Your power, however, is not arbitrary but it is to be exercised with discretion and in subordination to the rules of evidence. You may take into consideration the interest the witness has, if any, in the result of the trial; his bias or prejudice, if any, for or against the parties; his mental capacity for knowledge and his means of knowing that about which he testifies; the reasonableness or unreasonableness of his statements; his demeanor on the witness stand; his candor or evasion, if either appear; and applying your knowledge and observation of human actions, motives and affairs, you will find the truth and present the same in your verdict. [107—76]

The law also makes it my duty to instruct you that you are not bound to find in conformity to the testimony of any number of witnesses which do not produce conviction in your minds, against a less number, or against a presumption or other evidence satisfying your minds.

You are also instructed that a witness who is wilfully false in one part of his testimony may be distrusted by you in other parts. If you find that any witness in this case has testified falsely in one part of his testimony, you are at liberty to reject all or any part of his testimony, but you are not bound to do so; you may reject the false part and give such weight to other parts as you may think they are entitled to receive.

You are instructed that if the testimony of a witness appears to be fair, and not unreasonable, and is consistent with itself, and the witness has not been in any manner impeached, then you have no right to disregard the testimony of such witness from mere caprice and without cause. It is your duty to consider the whole of the evidence and to render a verdict in accordance with the weight of all the evidence in the case.

You are instructed that the affirmative of the issue shall be proved by the party alleging it, and, when the evidence is contradictory, your finding should be in accordance with the preponderance of the evidence. In determining upon which side the preponderance of the evidence is, you should bear in mind the rules given in these instructions for the weighing of testimony.

You are instructed that, under the laws of the District of Alaska relative to the appropriation of mining claims, it [108—77] is not necessary to record a notice of location in order to perfect a claim. If title to a claim has been initiated by a discovery of gold and marking of the boundaries by stakes and monuments and written notice posted on the claim, such title cannot be defeated by changing the name in the recorded notice, nor by taking down the notice which has been posted upon the claim and placing thereon a notice containing the name of another.

The main question for you to pass upon in this case is which of the parties to this litigation has the better right to the ground in controversy, under

the testimony as produced in the trial and the law as given you by the Court.

I hand you herewith two forms of verdict drawn in conformity with the law. When you have retired to your jury-room, and have agreed upon your verdict, each one for himself, you should have your foreman, to be selected by yourselves, sign the one upon which you unanimously agree and return it into court as your verdict in this case.

You may take with you into the jury-room for your guidance the exhibits and the pleadings in the case.

Let the bailiffs be sworn. You may now retire, gentlemen, to deliberate upon your verdict.

Nome, Alaska, October 15, 1914.

J. R. TUCKER,

District Judge.

AND THEREUPON after the jury had been instructed by the Court the jury retired to consider their verdict, and thereafter returned into court with a verdict in favor of the plaintiff and against the defendant in words and figures as follows:

[109—78]

*In the District Court for the District of Alaska,
Second Division.*

JERRY SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Verdict [in Bill of Exceptions].

We the jury in the above-entitled *find* for the plaintiff and that the plaintiff is entitled to the possession of the mining claim known and described as No. 32 Above Allen's Discovery on Kougarok River in the Kougarok Recording Precinct, Alaska, and the whole thereof, as described in plaintiff's complaint, and defendant is not entitled to the possession of any part thereof and we assess plaintiff's recovery at one dollar.

Dated this 16th day of October, 1914.

C. E. DARLING,
Foreman.

Which verdict was received by the Court and ordered filed as the verdict of the jury.

That thereafter, and within the time allowed by law, defendant filed his motion for a new trial which was in words and figures as follows, to wit:

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant. [110—79]

Motion for a New Trial [in Bill of Exceptions].

Comes now the defendant in the above-entitled action and moves the Court that the verdict here-

tofore rendered in said action be set aside and a new trial of said action granted on the following grounds:

I.

Newly discovered evidence material to said defendant which he could not with reasonable diligence discover and produce at the trial as appears from the affidavit of G. J. Lomen hereunto annexed and made a part hereof.

II.

Insufficiency of the evidence to justify the verdict and the said verdict is against law in this, to wit:

That there was no sufficient evidence produced at the trial to establish plaintiff's alleged location of No. 32 Above Allen's Discovery on the Kougarok River as alleged in plaintiff's complaint, and for the reason that there was no evidence whatever offered at the trial to establish such location for the reason that said action was an action in ejectment and that plaintiff sought to recover the premises in controversy by a mining location thereof alleged in plaintiff's complaint to have been made on January 10th, 1902, and no sufficient evidence, nor any evidence whatever, was produced upon said trial to establish such location.

III.

Errors in law occurring at the trial and excepted to by the defendant, to wit:

(a) That the Court erred in refusing to grant defendant's motion for a directed verdict made at the conclusion of the trial and before the Jury had retired. [111—80]

(b) That the Court erred in refusing to give the following instruction requested by the defendant:

“You are hereby instructed to find a verdict in favor of the defendant.”

(c) That the Court erred in refusing to give the following instruction requested by defendant:

“If you find from the evidence that one N. Methe, on or about the 10th day of January, 1902, took any steps towards locating, or did any act tending to locate the premises described in the complaint, or any part thereof, then I charge you that such step or steps, act or acts, if any, done by said N. Methe as the agent of any other person than the plaintiff N. O. Windquist, or in the name of another than the said plaintiff Windquist, did not inure to the benefit of the plaintiff Windquist and did not constitute any act of location on the part of said plaintiff Windquist; and I further charge you that then and in that case neither said platiff Windquist, nor any other person acting for or on behalf of said Windquist could appropriate said acts of said Methe, or any of them, as an act of location in the name of or for the benefit of said Windquist. And I further charge you that of said Windquist performed any act or acts in order to perfect, or necessary to perfect the location of the premises located, or attempted to be located by said Methe, with the intention of perfecting the location made, or attempted to be made by said Methe, then such act or acts on the part of said Windquist would not operate as or constitute an original location by Windquist or inure in any manner to the benefit of

said Windquist unless you find that said Methe, in the manner of locating or attempting to locate [112—81] said premises, acted as the agent of Windquist and not as the agent of another.”

(d) That the Court erred in refusing to give the following instruction requested by defendant:

“I further charge you that in Alaska it is not necessary to record any notice of location, and that when a location is made for an absent locator, whether with or without his authority, or with or without his knowledge, whatever rights are given to him by such location, vest in him at once, and even the person locating such absentee cannot take down the name of such absentee and insert the name of another whether in the notice posted on the ground if any, or in the certificate of location prepared for record, if any,”

(e) That the Court erred in refusing to give the following instruction requested by defendant:

“I further charge you that plaintiff, in order to recover in this action, must prove the title alleged in the complaint, to wit: Title under a location made on or about the 10th day of January, 1902, notice of which location was recorded in volume 32, at page 170 of the records of the Kougarok Recording District, District of Alaska.”

GEO. B. GRIGSBY,

G. J. LOMEN,

Attorneys for defendant. [113—82]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

AFFIDAVIT OF G. J. LOMEN.

United States of America,
Territory of Alaska,—ss.

G. J. Lomen, being duly sworn on oath deposes and
says:

That he is one of the attorneys for the defendant
in the above-entitled action; that said action came
on for trial on the 14th day of October, 1914; that
before the trial commenced the attorney for plain-
tiff, N. O. Windquist, moved that one Jerry Sullivan
be substituted as plaintiff in said action on the
ground as therein stated by counsel for plaintiff
that said Jerry Sullivan had succeeded to the in-
terest of N. O. Windquist in the premises described
in the complaint and was then and there the real
party in interest; that affiant did not then know nor
did defendant or his counsel know that said Jerry
Sullivan had theretofore, and affiant alleges the fact
to be that said Sullivan, on or about the 5th day of
November, 1913, by deed in writing on the date last
aforesaid and recorded in volume 81, page 95 of the
records of the Kougarak Recording District of Al-

aska, conveyed the interest acquired from said N. O. Windquist to one Con Kelly; that the above facts became known to affiant after the verdict rendered in the above-entitled action and could not with reasonable diligence have been ascertained before the trial of said action, the counsel for defendant relying upon the statement made by counsel for plaintiff in moving for the substitution of plaintiff. [114—83]

That by reason of the facts above set forth, affiant states that said action was not prosecuted in the name of the real party in interest, but in the name of said Jerry Sullivan, who appears by the transfer to said Con Kelly to have parted with his interest in the premises in litigation herein.

G. J. LOMEN.

Subscribed and sworn to before me this 19th day of October, 1914.

[Seal]

D. B. CHACE,

Notary Public in and for the Territory of Alaska,
Residing at Nome, Alaska.

(My commission expires May 12, 1917.)

And thereafter the following affidavits were filed in resistance to the motion for a new trial in behalf of plaintiff:

*In the District Court for the District of Alaska,
Second Division.*

JERRY SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

**Affidavit [of Jerry Sullivan, in Opposition to Motion
for a New Trial].**

United States of America,
Territory of Alaska,—ss.

Jerry Sullivan, being duly sworn, says: That he is the plaintiff in the above-entitled action; that he has read the affidavit of G. J. Lomen attached to the motion for a new trial [115—84] filed by the defendant in the above-entitled action; that it is true that on the 5th day of November, 1913, affiant made, executed and delivered to one Con Kelly of Nome, Alaska, a certain instrument in writing purporting to be a deed of conveyance conveying the mining claim known as No. 32 Above Discovery, with other claims in the Kougarok Recording District, to the said Kelly, and affiant verily believes that said deed is of record in the Kougarok Recording Precinct, Alaska, as stated in the aforesaid affidavit of said Lomen.

And affiant further says that the said Kelly is not now, and was not at the time of the trial of this action, the owner of said mining claim No. 32 Above Allen's Discovery, the claim in controversy in this action; that affiant was at the time of trial of said action, and now is, owner in fee of said mining claim subject only to the paramount title of the United States; that said deed was given to said Kelly to secure the payment of a large sum of money due and owing from affiant to the said Kelly and is and was intended

as a mortgage to secure said amount, and that said Kelly had at said time, and now has, no interest in said mining claim other than as mortgagee therein.

JERRY SULLIVAN.

Subscribed and sworn to before me this 27th day of October, 1914.

T. M. REED,

Notary Public.

My commission expires Aug. 31, 1918. [116—85]

*In the District Court for the District of Alaska,
Second Division.*

JERRY SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

**Affidavit of Con Kelly [in Opposition to Motion for
a New Trial].**

United States of America,
Territory of Alaska,
Cape Nome Precinct,—ss.

Con Kelly, being duly sworn, says: That he is the same Con Kelly mentioned in the affidavit of G. J. Lomen, attached to the motion for a new trial, in the above-entitled action; that he has heard said affidavit read and knows the contents thereof; that it is true that on or about the 5th day of November, 1913, affiant received from Jerry Sullivan, the plaintiff in the above-entitled action, a deed conveying to him the mining claim known as No. 32 Above Discovery,

and other claims in the Kougarok Recording District; that said deed was placed for record and is now of record in said Kougarok Recording District, Alaska.

Affiant further says: That said deed was given by the said Sullivan to affiant as security for money loaned by affiant to the said Sullivan, and for no other purpose; that affiant and the said Sullivan prior to the execution of said deed, agreed that said deed should be given to affiant as security for moneys theretofore and at said time loaned by affiant to said Sullivan and for no other purpose, and affiant does not now claim, nor has he ever claimed to be the owner of said placer mining claim and has no intrest and has never claimed to have any interest [117—86] therein, except as mortgagee of the mining claims and properties mentioned in said deed; that said deed was at the time the same was executed, intended to be and is now in fact a mortgage made and executed by the said Sullivan to affiant as security for moneys loaned to the said Sullivan by affiant.

CON KELLY.

Subscribed and sworn to before me this 27th day of November, 1914.

[Seal]

T. M. REED,
Notary Public.

My commission expires August 31, 1918.

That thereafter on the 2d day of January, 1915, a hearing was had upon said motion for a new trial, and upon said hearing defendant offered, and there was admitted in evidence, a deed of conveyance from plaintiff, Jerry Sullivan, to one Con Kelly conveying

from Jerry Sullivan to Con Kelly all the right, title and interest of Jerry Sullivan in and to the claim known as No. 32 Above Allen's Discovery, on the Kougarok River, as follows:

[Exhibit—Deed of Mining Claim.]

THIS INDENTURE made the 5th day of November in the year of our Lord one thousand, nine hundred and thirteen between JERRY SULLIVAN of Nome, Alaska, the party of the first part, and Con Kelly of Nome, Alaska, the party of the second part,

WITNESSETH; That the said party of the first part, for and in consideration of the sum of Ten (\$10) Dollars Gold Coin [118—87] of the United States of America, to him in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quitclaimed, and by these presence does grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns, all his right, title and interest in and to the following described portions of the following-described placer mining claims, to wit: An undivided one-half ($\frac{1}{2}$) of No. 9 Above Connolly's Discovery, an undivided three-fourths ($\frac{3}{4}$) of No. 6 Above Connolly's Discovery, an undivided one-eighth ($\frac{1}{8}$) of No. 2 Below Connolly's Discovery, all of No. 4 Below Connolly's Discovery, an undivided one-fourth ($\frac{1}{4}$) of No. 25 Above Allen's Discovery, all of No. 32 Above Allen's Discovery, all of said claims being situated on the Kougarok River; an undivided one-half ($\frac{1}{2}$) of No. 3 Below

on Trinity Creek, an undivided one-half ($\frac{1}{2}$) of No. 4 Below on Trinity Creek, a tributary to the Kougarok River, an undivided one-half ($\frac{1}{2}$) of No. 2 from the mouth on Macklin Creek, a tributary to the Kougarok River and all of the Oblong Fraction adjoining No. 9 Above Connolly's and No. 12 Below Johnson's Discovery, 1st tier of Benches on the right limit of the Kougarok River in the Kougarok Recording District, District of Alaska.

TOGETHER with all and singular the tenements, hereditaments, appurtenances, rights and privileges thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises and every part and parcel thereof, with the appurtenances. [119—88]

TO HAVE AND TO HOLD all and singular the said premises together with the appurtenances and privileges thereto incident unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

JERRY SULLIVAN.

Signed, sealed and delivered in the presence of:

C. E. KIMBALL,

JAS. M. STREETEN.

United States of America,

District of Alaska,—ss.

On this 5th day of November, A. D. one thousand

nine hundred and thirteen, personally came before me Jas. M. Streeten, a notary public in and for said District, the within-named Jerry Sullivan to me personally known to be the identical person described within and who executed the within instrument and he acknowledged to me that he executed the same freely, for the uses and purposes therein mentioned.

WITNESS my hand and seal this 5th day of November, 1913.

[Notarial Seal]

JAS. M. STREETEN,

Notary Public in and for the District of Alaska.

My commission expires 1st Sept., 1914.

United States of America,

District of Alaska,—ss.

This is to certify that I, F. H. Thomas, United States Commissioner and Ex-officio Recorder in and for the Kougarok Precinct, in the Second Division, District of Alaska, have compared [120—89] the within and foregoing copy of a deed with an instrument as the same appears of record Vol. 81 at Page 95 of the Records of said Precinct, and that the within and foregoing is a true and correct transcript of said record and of the whole thereof.

Witness my hand and seal this 18 day of April, 1914.

F. H. THOMAS,

U. S. Commissioner and Ex-officio Recorder.

(Recorded at the request of Jerry Sullivan, September 13, A. D. 1913, at 2 o'clock P. M., in vol. 81, of Deeds, at page 95, Records of Kougarok Recording Precinct. F. H. Thomas, Recorder.)

And the Court, after hearing the argument of counsel and having duly considered the same, overruled and denied the motion for a new trial.

To the order and ruling of the Court denying the motion for a new trial, defendant then and there excepted, which exception was allowed by the Court.

That thereafter and on the 9th day of January, 1915, judgment was entered upon the verdict rendered as aforesaid, and the defendant was granted twenty (20) days from and after the entry of judgment in which to prepare and file a bill of exceptions herein.

That thereafter, to wit, on the 27th day of January, 1915, defendant was granted thirty (30) days additional time in which to prepare and file a bill of exceptions herein. [121—90]

That thereafter, to wit, on the 27th day of February, 1915, defendant was granted twenty (20) days further time in which to prepare and file a bill of exceptions herein, and thereafter, on the 20th day of March, 1915, defendant was granted ten (10) days additional time and until the 30th day of March, 1915, in which to prepare and file said bill of exceptions.

Wherefore, defendant prays for an order of this court settling and allowing the foregoing bill of exceptions.

GEORGE B. GRIGSBY,

Attorney for Defendant.

Service of the within and foregoing bill of exceptions admitted this 29th day of March, 1915.

T. M. REED,

Of Attorney for Plaintiff.

Order Settling Bill of Exceptions.

The above and foregoing bill of exceptions having been served, filed and presented within the time allowed by law, and being full, true and correct, and containing all the evidence introduced at the trial, the same is hereby settled and allowed.

Done in open court this 3d day of July, 1915.

J. R. TUCKER,
District Judge. [122—91]

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff, vs, H. C. Ames, Defendant. Proposed Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Mar. 29, 1915. G. A. Adams, Clerk, By ————, Deputy. L. Refiled in the office of the clerk of the District Court of Alaska, Second Division, at Nome. Jul. 3, 1915. G. A. Adams, Clerk. By ————, Deputy. Orders and Judgments, vol. 11, page 139. [123]

*In the District Court for the District of Alaska,
Second Division.*

N. O. WINDQUIST, now by Substitution, JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Assignment of Errors.

Comes now the defendant above-named and assigns the following errors upon which he will rely:

I.

That the Court erred in overruling defendant's objection to the following testimony of George J. McLean, a witness produced for the plaintiff, as follows: (George J. McLean testifying.)

"After I heard that the Kshunti Fraction had been located, I had a conversation with Mr. Ames with reference to it.

Q. What did you tell him?

Mr. LOMEN.—Objected to as immaterial.

The COURT.—Overrule the objection."

To which ruling an exception was duly made and allowed.

"A. I told him, I said, 'You had better cut this fraction business out.' I said, 'I will have nothing to do with a claim that is jumped.'

Mr. LOMEN.—Move that the answer be stricken out.

The COURT.—Overrule motion."

To which ruling an exception was duly made and allowed.

II.

That the Court erred in overruling defendant's objection to the following testimony of George J. McLean, a witness produced [124] on behalf of the plaintiff, as follows: (Witness testifying.)

"I was requested several years ago by Mr. Windquist to make a survey of this ground.

Q. What was the survey to be made for?

Mr. GRIGSBY.—Objected to as immaterial and self-serving.

The COURT.—Objection overruled.”

To which ruling an exception was duly taken and allowed.

“A. I was instructed to survey No. 32 by Mr. Windquist. He told me that his claim had been jumped.”

III

That the Court erred in sustaining plaintiff's objection to certain testimony of the witness Gus Johnson as follows: (Witness testifying on cross-examination.)

“I first went to the initial stake and from there to the corners.

Q. Up to what corner?

A. I don't remember which one, to the south-east corner, I believe.

Q. Which side of the river were you on?

Mr. COCHRAN.—I object to this cross-examination. We have only put him on for one purpose and I don't care to go into all his testimony at this time. I simply wanted to show he knew where the boundaries were.

Mr. LOMEN.—I am trying to show he didn't know anything about it.

The COURT.—When he comes back you may go through this examination.

Mr. LOMEN.—If it please the Court the purpose of [125] this testimony is to authorize the map to go in evidence as a correct plat of some claim that was located. I want to show

this map was not based on the knowledge of anybody who knew anything about the claim at all and it cannot be introduced in evidence.

The COURT.—I think the map is sufficiently proven.

Mr. COCHRAN.—I now offer the map in evidence if your Honor please.

Mr. GRIGSBY.—We wish to finish our examination.

Mr. REED.—We object to immaterial matters and not directed to the exact point of the examination in chief.

Mr. LOMEN.—Before I get through with this witness I want to get evidence, sufficient at least, to have the Jury pass upon the question as to whether those willow stakes he says he saw in 1902 were there when he fixed up the stakes in 1904. We want to find out how much he knew about it when he told the surveyor.

The COURT.—I think this is wholly irrelevant. I think the plaintiff has put the witness on the stand for a specific purpose and I think it is proven whether the map is to be admitted in evidence. The map is admitted in evidence.

Mr. GRIGSBY.—Out objection is there is no evidence whatever tending to identify the map as a [126] map of the premises in controversy as claimed by plaintiff in his complaint and it is therefore immaterial; and the further objection the map is now ruled to be in evidence at a time when we are cross-examining a witness with reference to his competency and before we have closed our cross-examination.

Mr. COCHRAN.—We offer it and ask to have it marked Plaintiff's Exhibit 'A.'

The COURT.—All right."

To which ruling an exception was duly taken and allowed.

IV.

That the Court erred in overruling defendant's objection to the following testimony of Gus Johnson, a witness called on behalf of the plaintiff:

"Q. Now did you learn of a location notice at that time I don't care how, now, just generally, did you learn of a location notice of No. 32 for Windquist?

Mr. GRIGSBY.—Objected to as hearsay.

The COURT.—Overrule the objection."

To which ruling an exception was duly taken and allowed.

V.

That the Court erred in overruling defendant's objection to certain testimony of Gus Johnson, a witness called on behalf of the plaintiff, as follows:

"Mr. COCHRAN.—I offer the letter in evidence together with the translation.

Mr. GRIGSBY.—Objected to as incompetent, irrelevant, immaterial and self-serving.

The COURT.—Objection overruled." [127]

To which ruling an exception was duly taken and allowed.

VI.

The Court erred in striking out certain testimony of the witness H. C. Ames, the defendant, as follows: (H. C. Ames testifying.)

“I permitted him (referring to Gus Johnson) to work there (referring to the Kshunti *Faction*) on an agreement that he and I had. The agreement was to settle the line, the dispute of the line between his claim and mine. He said he had that power from Windquist. He agreed to settle the line at that time and we did establish a line. I can show it on the map there. (Witness traces a line across the map indicating the line agreed upon.) I said to Johnson ‘If you will settle this without any trouble I will give you that much of my claim’ and he said ‘Well there would not be much left’ and I said ‘It is only a difference of this corner and that is not much’ and he said ‘Well do that’ and I said ‘We will sink holes together next year with a boiler’ and he agreed to do it the next year. That was assessment work he was doing. I had my assessment work all done. Yes, we made that agreement with reference to this work. The holes that he sank there that year were about on the line that I just drew, the line we established as the line between his claim and mine. The agreement was that the next year, (I had a boiler and prospecting outfit) and I would furnish them and we would go in together and finish the holes. He dug the dirt down to the frost about three feet deep. It was about twelve or fifteen feet to bedrock. That was to be the assessment work on both claims for the next year if done in that manner, if we did it the next year.

Mr. COCHRAN.—I want to move at his time [128] to strike out all the evidence to this agreement because the same has not been coupled up or shown to be made, if made at all, with any authority from the owner of the claim.

(Argument.)

Mr. COCHRAN.—I am attempting to show the evidence offered by this witness is immaterial unless you can couple it up with the proper authority from the owner of the ground, Mr. Windquist.

Mr. GRIGSBY.—Now if the Court please, we are endeavoring to show exclusive possession of this ground ever since its location in 1903, and this witness has testified that nobody else has worked on Kshunti Fraction in any year since the location of it except 1911 and he only permitted the work to be done that year on account of an agreement made by him and the agent of Windquist to establish a boundary line. It is admissible whether or not it was binding on Windquist to show whether or not he suffered an agent or any owner of a conflicting location to work on his ground whether for the purpose designated by Cochran is admissible or not. I think it is admissible for that purpose because Windquist has testified he gave Johnson complete authority to do what he pleased with his claim. Johnson thereafter was his agent every year, did all the work that was done on the claim, Windquist never went with him; he could mine it, take anything out he could and

do as he pleased with it generally under that authority, up there miles from where Windquist was; when a dispute [129] arose he goes out and establishes a boundary line on the ground which is not a contract with reference to real estate that has to be done in writing. It is for the jury to say whether it is proof of an establishment of a boundary line or not. It is offered to show why he permitted Johnson to work on his fraction. (Argument.)

The COURT.—I will have to rule out the evidence.”

To which ruling an exception was duly taken and allowed.

VII.

The Court erred in sustaining plaintiff's objection to the following testimony of the defendant H. C. Ames:

“Q. What did Mr. Johnson say to this proposition when you made it to him

Mr. REED.—Objected to as not binding on the plaintiff or plaintiff's grantors unless the authority be in writing.

The COURT.—Objection sustained.”

To which ruling an exception was duly taken and allowed.

VIII.

The Court erred in sustaining plaintiff's objection to the following testimony offered on behalf of defendant by the defendant H. C. Ames:

“Mr. GRIGSBY.—Now we will again offer the matter stricken out, if the Court please.

We offer to prove the establishment of a boundary line in the summer of 1911 between the witness and Gus Johnson as agent for Windquist on the proof of agency already in evidence [130] and as a full establishment of a boundary line between those claims.

Mr. COCHRAN.—Objected to as incompetent and not binding upon the plaintiff or his grantors.

The COURT.—Objection sustained.”

To which ruling an exception was duly taken and allowed.

IX.

That the Court erred in overruling defendant's motion made after defendant and plaintiff rested and before the case was submitted to the Jury, as follows:

“Mr. LOMEN.—I move at this time for permission to file an amended and supplemental answer in this case alleging forfeiture of any claim known as No. 32 Above Allen's Discovery, if ever located, because of failure to do assessment work on the claim in 1911 and also in 1912. As far as the 1912 work is concerned, it is an alleged fact that occurred subsequent to the commencement of this action.

The COURT.—Motion overruled.”

To which ruling an exception was duly taken and allowed.

X.

That the Court erred in overruling the motion of the defendant that the Court direct the jury to re-

turn a verdict for the defendant as follows:

“Mr. LOMEN.—(After plaintiff and defendant had rested.) I, at this time, move that the Court direct the Jury to bring in a verdict for the defendant.

The COURT.—Motion overruled.”

To which ruling an exception was duly taken and allowed. [131]

XI.

That the Court erred in refusing to instruct the Jury as follows:

“You are hereby instructed to find a verdict in favor of the defendant.”

To which refusal an exception was duly taken and allowed.

XII.

The Court erred in refusing to give to the Jury the following instruction requested by defendant:

“If you find from the evidence that one Methe on or about the 10th day of January, 1902, took any steps toward locating, or did any act tending to locate the premises described in the complaint, or any part thereof, then I charge you that such step or steps, act or acts, if any, done by said N. Methe as the agent of any other person than the plaintiff N. O. Windquist, or in the name of another than the said plaintiff Windquist, did not inure to the benefit of the plaintiff Windquist and did not constitute any act of location on the part of said plaintiff Windquist; and I further charge you that then, and in that case, neither the said plaintiff Windquist

nor any other person acting for or on behalf of said Windquist, could appropriate said acts of said Methe, or any of them, as an act of location in the name of, or for the benefit of said Windquist; and I further charge you that if said Windquist performed any act or acts in order to perfect or necessary to perfect the location of the premises located, or attempted to be located by said Methe, with the intention [132] of perfecting the location made, or attempted to be made by said Methe, then said act or acts on the part of said Windquist would not operate as, or constitute an original location by Windquist or inure in any manner to the benefit of said Windquist unless you find that said Methe, in the matter of locating or attempting to locate, said premises, acted as the agent of Windquist and not as the agent of another.”

To the refusal of the Court to give such instruction the defendant excepted and exception was allowed.

XIII.

That the Court erred in refusing to give the following instructions requested by defendant.

“I further charge you that in Alaska it is not necessary to record any notice of location and that when a location is made for an absent locator, whether with or without his authority, or with or without his knowledge, whatever rights are given to him by such location, vest in him at once and even the person locating such absentee cannot take down the name of such absentee and

insert the name of another, either in the notices posted on the ground, if any, or in the certificate of location prepared for record, if any.”

To which refusal an exception was duly taken and allowed.

XIV.

That the Court erred in refusing to give to the jury the following instruction requested by the defendant:

“I further charge you that plaintiff, in order to [133] recover in this action, must prove the title alleged in the complaint, to wit: Title under a location made on or about the 10th day of January, 1902, notice of which location was recorded in volume 32 at page 170 of the records of the Kougarok Recording District, District of Alaska.”

To which refusal an exception was duly taken and allowed.

XV.

That the Court erred in denying the defendant's motion for a new trial as appears from the said motion incorporated in the Bill of Exceptions herein, to which order and ruling of the Court defendant then and there excepted and an exception was duly allowed by the Court.

WHEREFORE said defendant H. C. Ames, prays that the judgment of the said District Court for the District of Alaska, Second Division, be reversed and set aside.

IRA D. ORTON,

GEORGE B. GRIGSBY,

Attorneys for Defendant.

I hereby acknowledge the service of the above assignment of errors by receipt of copy this 30th day of October, 1915.

T. M. REED,
Of Attorneys for Plaintiff. [134]

[Endorsed]: No. 2372. In the District Court for the District of Alaska, Second Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff, vs. H. C. Ames, Defendant. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Oct. 30, 1914. G. A. Adams, Clerk. By ———, Deputy. George B. Grigsby, Attorney for Defendant. [135]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Petition for Writ or Error.

The defendant in the above-entitled action, feeling himself aggrieved by the verdict of the jury and the judgment entered on the 9th day of January, 1915, in said action, comes now by George B. Grigsby and Ira D. Orton, his attorneys and petitions the above court for an order allowing said

defendant to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in the above-entitled court *to* be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit. And your petitioner will every pray.

IRA D. ORTON,
GEORGE B. GRISBY,
Attorney for Defendant.

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Petition for Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By ———, Deputy. George B. Grigsby, Attorney for Defendant [136]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Undertaking on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, H. C. AMES, as principal, and T. H. Evans
and D. W. Johnston, as sureties, are held and firmly
bound unto Jerry Sullivan, the plaintiff above-
named in the sum of Two Hundred Fifty (\$250)
Dollars to be paid to the said Jerry Sullivan, his
heirs, executors, administrators or assigns, to the
payment of which well and truly to be made we
bind ourselves, and each of us, jointly and severally,
and our and each of our heirs, executors, adminis-
trators and assigns, firmly by these presents.

Sealed with our seals and dated this 30th day of
October, 1915.

The condition of the obligation is that,

WHEREAS, the above-named defendant, H. C.
Ames has sued out a writ of error to the United
States Circuit Court of Appeals for the Ninth Cir-
cuit to reverse the judgment in the above-named
cause rendered by the District Court of the Dis-
trict of Alaska, Second Division:

NOW, THEREFORE, if the above-named H. C. Ames shall prosecute said writ to effect and answer and pay all costs if he fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

H. C. AMES.

(Principal)

T. H. EVANS.

D. W. JOHNSTON. (Sureties) [137]

United States of America,
Territory of Alaska,—ss.

T. H. Evans and D. W. Johnston, being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident of the District of Alaska, and one of the sureties above mentioned; that he is not a counselor or attorney at law, marshal deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth the sum of Two Hundred Fifty (\$250) Dollars over and above all just debts and liabilities and exclusive of property exempt from execution.

T. H. EVANS.

D. W. JOHNSTON.

Subscribed and sworn to before me this 30th day of October, 1915.

[Seal]

D. B. CHACE,

Notary Public for the Territory of Alaska, residing
at Nome.

(My commission expires May 12th, 1917.)

The foregoing bond on Writ of Error presented

and approved in open court this 30th day of October, 1915.

J. R. TUCKER,
District Judge. [138]

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Undertaking on Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Oct. 30, 1915. G. A. Adams, Clerk. By ———, Deputy. [139]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Order Allowing Writ of Error.

Upon the motion of George B. Grigsby, attorney for the defendant in the above-entitled action, and upon filing a petition for a writ of error together with assignment of errors, it is hereby

ORDERED that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein and that the

amount of bond on said writ of error be, and is hereby fixed at Two hundred fifty Dollars (\$250) said bond to operate as a cost bond.

Done in open court this 30th day of October, 1915.

J. R. TUCKER,

District Judge.

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Order Allowing Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By _____, Deputy. George B. Grigsby, Attorney for Defendant. [140]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Writ of Error (Lodged Copy.)

The President of the United States, to the Honorable J. R. TUCKER, Judge of the District Court for the District of Alaska, Second Division:

Because in the records and proceedings, as also

in the rendition of the judgment of a plea which is in the said District Court for the District of Alaska, Second Division, before you, between H. C. Ames, plaintiff in error, and Jerry Sullivan, defendant in error, a manifest error hath happened to the great damage of the said H. C. Ames, plaintiff in error, as by the complaint appears.

We, being willing that error, of any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 29th day of November, 1915, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right according to [141] the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this 30th day of October, in the year of our Lord one thousand nine hundred and fifteen and of

our Independence the one hundred and fortieth.

[Seal]

G. A. ADAMS,

Clerk of the District Court, District of Alaska, Second Division.

Allowed by:

J. R. TUCKER,

District Judge.

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Writ of Error (Lodged Copy). Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By _____, Deputy. Geo. B. Grigsby, Attorney for Defendant. [142]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Order Enlarging Time to File Record.

On motion of George B. Grigsby, counsel for defendant, the time for filing the record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit is hereby extended

to and until the 10th day of December, 1915.

Done in open court this 30 day of October, 1915.

J. R. TUCKER,

District Judge.

[Endorsed]: #2372. In the District Court for the District of Alaska, 2d Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Order Enlarging Time to File Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By _____, Deputy. George B Grigsby, Attorney for Defendant. [143]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Praeipie for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make transcript of the following papers on file herein: All pleadings, verdict, motion for new trial, judgment, bill of exceptions, order extending time to settle bill of exceptions, assignment of errors, petition for writ of error, order

allowing writ of error, bond on writ of error, lodged copy of writ of error, order extending time to docket case, and other appeal papers, the original writ of error and original citation to be attached.

GEORGE B. GRIGSBY,

IRA D. ORTON,

Attorneys for Defendant.

[Endorsed]: #2372. In the District Court for the District of Alaska, Second Division. N. O. Windquist, now by Substitution Jerry Sullivan, Plaintiff vs. H. C. Ames, Defendant. Praeceptum for Transcript of Record. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 30, 1915. G. A. Adams, Clerk. By _____, Deputy. [144]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court for the District of Alaska,
Second Division.*

No. —.

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the

foregoing typewritten pages, from 1 to 144, both inclusive, are a true and exact transcript of the Complaint, Answer, Reply, (being all the pleadings) Instructions to the Jury, Verdict, Motion for New Trial, Affidavit of G. J. Lomen in Support of Motion for New Trial, Court Minutes Jan. 2, 1915 (Denying Motion for New Trial), Judgment, Court Minutes, July 3, 1915, (Continuing Settlement Bill of Exceptions) Proposed Bill of Exceptions, Order Settling Bill of Exceptions, Assignment of Errors, Petition for Writ of Error, Undertaking on Writ of Error, Order Allowing Writ of Error, Writ of Error, (Lodged Copy), Order Enlarging Time to File Record and Praeipie for Transcript of Record in the case of N. O. Windquist, now by substitution Jerry Sullivan, Plaintiff, vs. H. C. Ames, Defendant, No. 2372 this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the Original Writ of Error and Original Citation in the above-entitled cause are attached to this transcript.

Cost of transcript \$61.85, paid by George B. Grigsby of attorneys for defendant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 3d day of November, A. D. 1915.

[Seal]

_____,
Clerk. [145]

*In the District Court for the District of Alaska,
Second Division.*

No. —

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Writ of Error (Original)

The President of the United States, to the Honorable J. R. TUCKER, Judge of the District Court for the District of Alaska, Second Division:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court for the District of Alaska, Second Division, before you, between H. C. Ames, plaintiff in error, and Jerry Sullivan, defendant in error, a manifest error hath happened to the great damage of the said H. C. Ames, plaintiff in error, as by the complaint appears.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, to-

gether with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 29th day of November, 1915, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right [146] according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States this 30th day of October, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

[Seal]

G. A. ADAMS,

Clerk of the District Court, District of Alaska,
Second Division.

Allowed by:

J. R. TUCKER,

District Judge. [147]

*In the District Court for the District of Alaska,
Second Division.*

No. —

N. O. WINDQUIST, now by Substitution JERRY
SULLIVAN,

Plaintiff,

vs.

H. C. AMES,

Defendant.

Citation (Original)

The President of the United States of America, to
Jerry Sullivan and to O. D. Cochran and T. M.
Reed, His Attorneys:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, within the State of California, within thirty (30) days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the District Court for the District of Alaska, Second Division, in the above-entitled cause wherein H. C. Ames is plaintiff in error and Jerry Sullivan is defendant in error, to show cause, if any there be why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 30th day of October, A. D. 1915, and of the Independence of the United States the one hundred and fortieth.

J. R. TUCKER,
District Judge.

Attest my hand and the seal of the United States District Court for the District of Alaska. Second Division, at the clerk's [149] office at Nome,

Alaska, the day and year last above written.

[Seal]

G. A. ADAMS,
Clerk of the District Court for the District of
Alaska, Second Division.

Received copy this 30th day of October, 1915.

Of O. D. COCHRAN,
Attorney for Plaintiff. [150]

[Endorsed]: No. 2682. United States Circuit
Court of Appeals for the Ninth Circuit. H. C. Ames,
Plaintiff in Error, vs. Jerry Sullivan, Defendant in
Error. Transcript of Record. Upon Writ of Error
to the United States District Court of the District
of Alaska, Second Division.

Filed November 16, 1915

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit

By MEREDITH SAWYER,
Deputy Clerk.

